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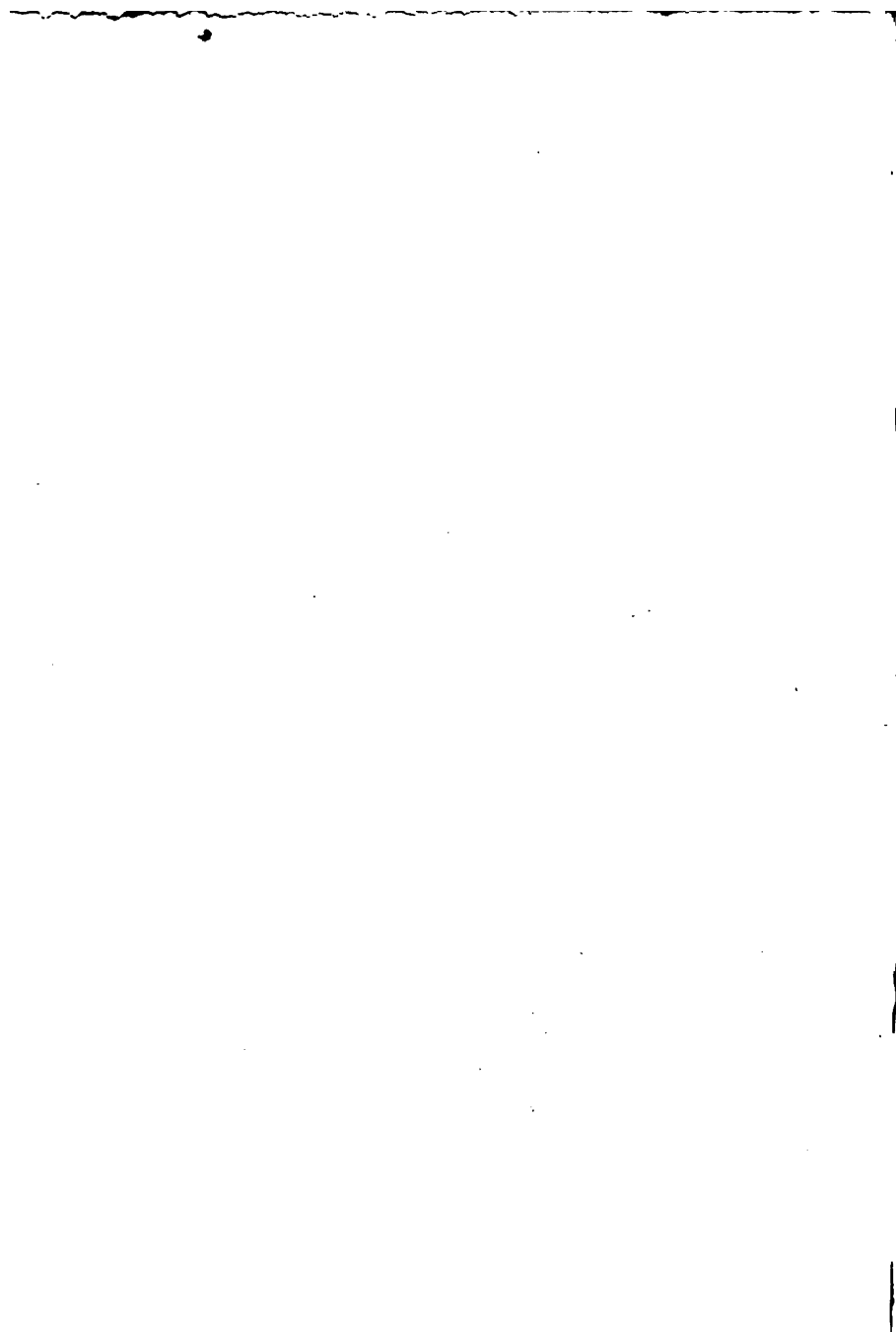
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THE
Law and Customs
OF THE
LONDON STOCK EXCHANGE.



THE
Law and Customs
OF THE
LONDON STOCK EXCHANGE,
WITH
AN APPENDIX
CONTAINING THE
RULES AND REGULATIONS AUTHORIZED BY THE COMMITTEE, FOR THE
CONDUCT OF BUSINESS.

BY
RUDOLPH E. MELSHEIMER,
OF THE INNER TEMPLE, BARRISTER-AT-LAW,
AND
WALTER LAURENCE,
OF THE LONDON STOCK EXCHANGE.



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PREFACE.



IN view of the continually increasing interest taken by the public in matters connected with the Stock Exchange, and the consequent desire for information respecting them which has lately been evidenced by discussions in Parliament, and by the appointment of a Royal Commission to inquire into the subject, it is hoped that this short treatise will be found to supply a real want, and that it may afford assistance as well to the investor as to the practitioner. The scope of the work is confined to a description of the various steps in a supposed transaction, by means of which an order given by a principal to his broker is carried out on the Stock Exchange, and a discussion of the legal relationship of the parties at each stage of this transaction; but it has not seemed desirable to go further, or to enter upon any questions as to the subsequent rights of the parties as bondholders or owners of shares in companies, because this has already formed the subject of treatises by

much more able authors on the Law of Companies, Partnership, and Shares, to which the reader is referred.

After the book had been written, it was thought that it could not be looked upon as complete without the addition of the actual text of the Rules of the Stock Exchange; a copy of these Rules, as at present in force, will accordingly be found set out in extenso in the Appendix, and reference has been made to them in the Index, under the same headings, as far as possible, as in the authorized edition.

R. E. M.

W. L.

2, HABCOURT BUILDINGS, TEMPLE,
May, 1879.

CONTENTS.



CHAPTER I.

THE STOCK EXCHANGE.

	PAGE
Constitution—Method of Business—Continuations—Settle- ment—Options—Gaming—Leeman's Act	1



CHAPTER II.

PRINCIPAL AND BROKER.

Implied Contract of Indemnity—Contract Note—Commis- sion—Insolvency	27
--	----



CHAPTER III.

BROKER AND JOBBER.

Rules of the Stock Exchange—Buying in and Selling out —Delivery of Securities—Payment	55
--	----



CHAPTER IV.

PRINCIPAL AND JOBBER.

Intervention of Committee—Implied Contract by Jobber —Discharge of Jobber	72
--	----

CHAPTER V.

TRANSFEROR AND TRANSFEREE.

	PAGE
Contract between ultimate Parties—Indemnity—Specific Performance—Transfers	83

CHAPTER VI.

DEFAULTERS.

Effect of Bankruptcy—Procedure on the Stock Exchange —Official Assignees	102
---	-----

CHAPTER VII.

SPECIAL SETTLEMENTS AND QUOTATIONS.

The Official List—Settlements—Quotations—Dealings before Allotment—Cornering	111
---	-----

APPENDIX.

RULES OF THE STOCK EXCHANGE	125
-------------------------------------	-----

INDEX	153
---------------	-----

TABLE OF CASES CITED.

	PAGE
Allen <i>v.</i> Graves	14, 75, 77
Barry <i>v.</i> Crosskey	123
Bayley <i>v.</i> Wilkins	33
Bayliffe <i>v.</i> Butterworth	27, 32
Beckitt <i>v.</i> Bilbrough	91, 97
Bedford <i>v.</i> Bagshaw	122
Birmingham <i>v.</i> Sheridan	81, 85, 91
Biederman <i>v.</i> Stone	35
Bowlby <i>v.</i> Bell	46, 48, 92
Bowring <i>v.</i> Shepherd	86
Brookman <i>v.</i> Rothschild	38
Brown <i>v.</i> Black	87
—— <i>v.</i> Boorman	28
Capper's case	76
Case <i>v.</i> M'Clellan	94
Castellan <i>v.</i> Hobson	87
Chapman <i>v.</i> Shephard	34
Cheale <i>v.</i> Kenward	86, 91
Child <i>v.</i> Morley	31
Clegg <i>v.</i> Townsend	30
Coles <i>v.</i> Bristowe	74, 79
Cooke, <i>Ex parte</i>	44, 103
Cooper <i>v.</i> Neil	23
Cope <i>v.</i> Rowlands	42
Copeland <i>v.</i> North Eastern Rail. Co.	96
Crabb <i>v.</i> Miller	29
Crowley's case	47, 50
Cruise <i>v.</i> Paine	80
Cuddee <i>v.</i> Rutter	91
Davenport <i>v.</i> Powell	42
Dent <i>v.</i> Nickalls	76
Dodds <i>v.</i> Hills	90
Donaldson <i>v.</i> Gillott	90
Duncan <i>v.</i> Hill	48
Duncuft <i>v.</i> Albrecht	91

	PAGE
Dunne <i>v.</i> English	39
Dyster, <i>Ex parte</i>	37
England (Bank of) <i>v.</i> Macleod	39
Evans <i>v.</i> Wood	84, 85, 86
Fenwick <i>v.</i> Buck	39
Fletcher <i>v.</i> Marshall	29, 36, 39, 44
Fox <i>v.</i> Mackreth	37
Franklyn <i>v.</i> Lamond	92
Gillett <i>v.</i> Peppercorne	39
Goldschmidt <i>v.</i> Jones	77
Goodwin <i>v.</i> Robarts	90
Gorgier <i>v.</i> Mieville	90
Grisewood <i>v.</i> Blane	21
Grissell <i>v.</i> Bristowe	27, 28, 55, 79, 84
Hawkins <i>v.</i> Maltby	84, 86
Hibblethwaite <i>v.</i> M'Morine	96
Hodgkinson <i>v.</i> Kelly	83, 85, 89
Holmes <i>v.</i> Symons	85, 89
Humble <i>v.</i> Langston	88
Hunt <i>v.</i> Gunn	37, 64
Hunter <i>v.</i> Walters	98
Jackson <i>v.</i> Cocker	91, 97
Jessop <i>v.</i> Lutwyche	43
Jones <i>v.</i> Powell	42
Josephs <i>v.</i> Pebrer	30
Kellock <i>v.</i> Enthoven	89
Kempson <i>v.</i> Saunders	92
Kimber <i>v.</i> Barber	39
Knight <i>v.</i> Cambers	43
—— <i>v.</i> Fitch	43
Lacey <i>v.</i> Hill	47
Lamert <i>v.</i> Heath	36
Langton <i>v.</i> Waite	15
London, Hamburg, &c. Bank, <i>In re</i>	29
Lloyd <i>v.</i> Crispe	81
M'Ewen <i>v.</i> Woods	46
Magee <i>v.</i> Atkinson	41
Marnham, <i>Ex parte</i>	22
Marten <i>v.</i> Gibbon	22, 57, 107
Maxted <i>v.</i> Morris	29, 39, 76
—— <i>v.</i> Paine (1)	74, 76
—— (2)	76, 77, 78
Mayhew's case	90
Mewburn <i>v.</i> Eaton	94

TABLE OF CASES CITED.

xi

	PAGE
Meyer v. Dresser	28
Mitchell v. Newhall	27, 37
Mocatta v. Bell	70
Mollett v. Robinson	28
Morris v. Cannan	86, 97
—— v. Hunter	28
Mortimer v. M'Callan	69
Nickalls v. Eaton	76
—— v. Furneaux	87
—— v. Merry	75, 76
Ortigosa v. Brown	97
Paine v. Hutchinson	78, 81
Pasley v. Freeman	122
Peake v. Gurney	123
Pearson v. Scott	52
Peppercorne v. Clench	76
Phené v. Gillan	87
Phillips, Ex parte	22
Pidgeon v. Burslem	31
Pollock v. Stables	32
Poole v. Middleton	91
R. v. Aspinall	121
— v. de Berenger	113
— v. Esdaile	113
— v. General Cemetery Co.	96
Remfry v. Butler	81
Robins v. Edwards	91
Robinson v. Mollett	28
Rosewarne v. Billing	22, 43
Royal Exchange Co. v. Moore	70
Rumball v. Metropolitan Bank	90
Saffery, Ex parte	73, 103
Sargent, Ex parte	90, 96
Scott v. Cousins	3
—— v. Inglis	3
—— v. North	3
Scrimgeour's case	47
Seymour v. Bagshaw	123
Shaw v. Fisher	86, 91
Shepherd v. Gillespie	88
—— v. Murphy	81, 84
Shropshire Union, &c. Co. v. R.	98
Smith v. Lindo	31, 34
Stephens v. De Medina	48, 92
Stewart v. Cauty	28, 85
—— v. Lupton	66
Stray v. Russell	51, 81, 85

	PAGE
Sutton <i>v.</i> Tatham	27, 32
Swan <i>v.</i> North British, &c. Co.	96, 97
Sweeting <i>v.</i> Pearce	28
Taylor <i>v.</i> Gt. Indian, &c. Co.	97
Taylor <i>v.</i> Plumer	44
— <i>v.</i> Stray	33, 51
Tempest <i>v.</i> Kilner	37
Thacker <i>v.</i> Hardy	23
Torrington <i>v.</i> Lowe	88
Union Bank of Manchester, <i>Ex parte</i>	99
Walker <i>v.</i> Bartlett	88
Ward <i>v.</i> S. E. R. Co.	90
Waterhouse <i>v.</i> Jamieson	90
Wells <i>v.</i> Porter	42
Westropp <i>v.</i> Solomon	36
Whitehead <i>v.</i> Izod	34
Wigglesworth <i>v.</i> Dallison	27
Wilkinson <i>v.</i> Lloyd	81
Wilson <i>v.</i> Short.,	37
Wiltshire <i>v.</i> Sims	28
Wright <i>v.</i> Inland Revenue	95
Wynne <i>v.</i> Price.. .. .	86
Young <i>v.</i> Cole	31, 36
Zulueta's case	30

CHAPTER I.

THE STOCK EXCHANGE.

THE London Stock Exchange is described in the recent¹ Report of a Royal Commission as a voluntary association of those who deal in the various securities which pass by the name of stocks and shares. We find it there stated that this association, as at present constituted, has been in existence about seventy-five years. It has been the result of a natural growth, arising in a great measure from the enormous increase in number and variety of foreign stocks, and of the stocks, shares, debentures, &c. connected with industrial undertakings in modern times. Its main objects appear to be the easy and expeditious transaction of business, and the enforcement of fair dealing among its members. To these ends a building has been provided for their exclusive use, and a set of rules formed for the admission and expulsion of members, and for the control of their conduct both between themselves and towards the public. It consists in a certain sense of two distinct bodies: first, the shareholders or proprietors; and, secondly, the subscribers, the latter being the persons generally described as members of the Stock Exchange, or members of "the House." The members alone (and their clerks²) have a right of entry to the Stock

Constitution.

¹ 31st July, 1878.

² Post, p. 4.

Committee

Exchange for the transaction of business on payment of the admission fee and subscription fixed by the representatives of the shareholders. The control over all matters connected with the building and its arrangement is vested in the managers, who represent the shareholders; while the members are represented by the Committee for General Purposes, elected from among themselves. This Committee, thirty in number, annually elect or re-elect the members; they appoint their own secretary and the official assignees,¹ and exercise a general control over the mode in which business is transacted in the house, and the conduct of its members. Those members who have not been clerks pay an admission fee of 100 guineas, and an annual subscription of 20 guineas; those who have previously served as clerks during four years, pay an admission fee of 60 guineas, and an annual subscription of 13 guineas; these fees and subscriptions being substantially a rent paid to the shareholders for the use of the building. A new deed of settlement has been executed, in 1876, with a view to the ultimate amalgamation of these two bodies; at present, however, they are distinct.

Admission.

Any person is eligible for membership who is not engaged in any business other than that of the Stock Exchange. He must be originally recommended by three members of not less than four years' standing who have fulfilled all their engagements. Each recommender must engage to pay 500*l.* to the creditors of the candidate in case the latter be declared a defaulter within four years from the date of his admission, and must not be indemnified by anyone on his behalf; but if the candidate has served as clerk to a member for four years previously only two

¹ Post, Ch. VI.

guarantors are required in 300*l.* each. No member is allowed to be surety for more than two new members at the same time. Foreigners are not admissible unless naturalized two years previously. The election is by ballot among the Committee, and the members are subject to re-election each year.

The members again are divided into two classes : Jobbers and dealers, or jobbers, and brokers, each class numbering roughly about a thousand. There is no formal distinction between them, and there is nothing to prevent a member acting as a dealer one month and as a broker the next ; but the Committee do not allow members or their authorized clerks to act in the double capacity, nor do they sanction partnerships between brokers and dealers.

The dealers remain in the House ready to deal with anyone who comes, as will be explained presently.

The brokers are the means of communication between the outside public and the dealers. All brokers, whether members of the Stock Exchange or not, are required by the Court of Mayor and Aldermen of the City to be admitted by them, to take out a licence (under a penalty of 100*l.* for acting without one¹), and to pay a yearly subscription of 5*l.* to the Chamberlain of the City.² The court is compelled to admit anyone, not under disability, upon payment of 5*l.*, the old system of swearing brokers being no longer in existence. The court also keeps a list of their names and addresses, and has power to remove the name of any broker convicted of felony or fraud.³ This licence is, however, entirely independent of the Stock Exchange ; and, on the other hand, there is nothing to prevent a person taking out

"Sworn
brokers."

¹ 57 Geo. 3, c. lx, s. 2; *Scott v. North*, L. R., 2 C. P. 270; *Scott v. Cousins*, and *Scott v. Inglis*, L. R., 4 C. P. 177.

² See 33 & 34 Vict. c. 60, s. 5.

³ *Ib.* s. 6.

such a licence and acting as a stockbroker without being a member of the Stock Exchange.

Clerks.

The clerks, alluded to above, are also admitted by the Committee to the privilege of entering the House on the written application of their employers, subject to certain restrictions. Inside the Stock Exchange a list is posted containing the names of all clerks who are authorized by their employers to transact business, and distinguishing the clerks who are also members. The authority of such "authorized clerks" continues until revoked by a letter to the committee, and gives them power to bind their employers in all ordinary transactions, but does not allow them to borrow money without security, unless with the special authority of their employer. Clerks, whether authorized or not, and whether members of the Stock Exchange or not, are not allowed to make any bargain in their own names, and any member who makes such a bargain with a clerk is liable to expulsion.

Business.

A person desirous of buying or selling securities may, of course, himself find some one willing to sell or to buy the same securities, and may deal with him without the intervention of the Stock Exchange; but the Exchange, being the only recognized market for such securities, affords to the public the very great advantage of being enabled, by means of a stockbroker and a jobber, to buy or to sell at any moment any quantity of stock or any number of any description of shares at the market price of the day, and to conclude the transaction, in the large majority of cases, on the settling day at the latest.

If then the would-be buyer or seller wishes to avail himself of this advantage, he will enter upon a transaction of the kind which we propose in the following chapters to examine in detail.

The transaction is briefly to this effect :—The person supposed, not being a member of the Stock Exchange, instructs a stockbroker to act for him. The broker, whom we will suppose to be a member, enters the House, seeks a jobber who deals in the particular security in question, and asks him to “make a price in it,” not mentioning whether his instructions are to buy or to sell. The jobber does so by naming two prices, one that at which he will buy, the other that at which he will sell; the difference between these two prices being the “turn of the market.” This turn will, in the absence of fluctuations in price, constitute the jobber’s profit, provided he can make the amounts of his sales balance his purchases. The jobber is of course not bound to make a price at all, but having done so, the broker is then entitled to announce himself as either a buyer or a seller at the price named, and the jobber is bound to accept a contract accordingly. He is not bound to deal to any amount that the broker may choose to name, certain limits being fixed¹ by the rules of the Stock Exchange, beyond which the offer does not bind the jobber. If then the broker has been instructed to buy or sell an amount in excess of these limits, and larger than the jobber is likely to deal in at the price made, it is open to the broker, if he chooses, either to name the amount in which he wishes to deal, leaving it to the jobber to withdraw or abide by his price, or to conclude a bargain with him at that price to the extent of the limit, or as far as he will go, and to deal with some other jobber for the balance.

Making a price.

Turn of the market.

¹ These limits are 1,000% stock, or scrip, 750 francs French rentes, ten shares to bearer, and ten registered shares if in value under 500%,

or, if their value is higher, then such a number of shares as does not exceed 500% in value.

Non-current
securities.

We have hitherto assumed the dealing to be in a "current" security; there is, however, a very large number of securities of the "non-current" class, that is to say, such as are limited in quantity, and in which the buying and selling is not sufficiently frequent to enable the dealer to "make a price" with any reasonable certainty of being able to balance his transactions. In these cases the broker would ask the "dealer" to make a price in the same manner as when dealing with a "jobber" in a current security; but if, as is not improbable, he fails to find a dealer who will make a reasonable price, or any price at all, the frequent practice is for the broker to "open" to the dealer, that is to say, to tell him the nature and extent of his order, sometimes leaving it in his hands to be executed, with or without a stipulation as to the limit of the price, and the profit to be taken by the dealer.

An opinion is expressed in the Report of the Stock Exchange Commission, that in such cases it is not easy to see the advantage of the interposition of the dealer, and a suggestion is made that in the interest of the public it might be dispensed with altogether, and instead, that a book or register might be kept in the Stock Exchange, in which brokers could enter from time to time the names and quantities of any securities of the non-current class which they may have instructions to buy or sell, so as to bring the buying and selling brokers into immediate contact, and, by the exclusion of the middleman, to save to the parties the profits, sometimes unreasonably large, which he secures for himself. But it would seem that if an unreasonably large profit can be guarded against, if necessary by express stipulation, the matter would be expedited by the intervention of the dealer, who would, in his own interest, use all his endeavours to

conclude the transaction. A register of the kind suggested does exist in the House, but being restricted to securities in which no dealer can be found to make any price, it is very little used.

Let us suppose, then, that a "price" has been made, and that the broker has declared himself a buyer; a contract is thereby concluded at the higher of the two prices named by the jobber; and usually each makes a memorandum in his note-book, but no written contract passes between them. The contract.

Having thus made the bargain, the broker may "mark" the price at which he has dealt, and this step, though not compulsory, is very desirable for the satisfaction both of the broker and his client. The marking is effected by the broker handing to one of the clerks of the House a slip containing a note of the security in which he has dealt, and the price of the bargain, and the clerk then records the price on the board. This board is an official record of business done, and on it all dealings, except special bargains or bargains for small amounts,¹ can be thus marked during the official hours from eleven to three. Marking.

This is a great safeguard against any collusion between broker and jobber; for it is competent to the client to insist, when the order is given, that his broker shall mark the bargain; and it is again com-

¹ The prices of bargains done in the following amounts of stock may be quoted in the official list, viz.,

Government perpetual annuities, 500*l.* stock;

Omnium or scrip, 1,000*l.*;

Annuities for a term of years, 20*l.* per annum;

Bank or India stock, 200*l.*;

Exchequer bills and India

bonds, 1,000*l.* ; under that amount to be quoted separately, whether of 500*l.* or any smaller amount;

Foreign stock or securities, 1,000*l.* stock or scrip; or an amount representing about 500*l.* money. Five shares in any company, or any number of shares or amount of stock being in value above 200*l.*

petent to other members to object to the marking, and to have it struck out if the price should appear to be outside the current quotations, on obtaining the authority of the chairman, deputy-chairman, or two members of the Committee.

It is of course desirable that bargains should be marked immediately upon their completion; but the clerks of the House may, with the concurrence of a member of the Committee, quote omitted bargains, if notified before one o'clock, in the order in which they occurred, upon a written application from the buyer and the seller, stating the amount, the time when, and the price at which, such bargains were made; such application must be filed, and laid before the Committee at their next meeting. This regulation applies likewise to all bargains done between one and three o'clock, but is very rarely called into operation.

Contract
note.

The broker then makes an entry of the bargain, and sends a written note¹ of it to his client, specifying the day for settlement, which is, in the large majority of cases, the following account day,² and usually mentioning the name of the jobber dealt with.

Checking
bargains.

On the following day the clerks of the broker and jobber meet in the checking room, and check the bargain so entered, which then rests until the account.³

Account
day.

The account day is fixed by the Committee, and notice is given by the secretary of the day appointed. The account days for English and India stocks, &c., which happen once a month—usually in the first week in the month—are always fixed at least five

¹ Post, p. 40.

² As to bargains in scrip of

new loans, &c., see Ch. VII.

³ Post, p. 15.

weeks beforehand; and those for foreign stocks, shares, &c., which happen twice a month, are fixed at the first committee meeting in the month preceding.

On these days the securities are, as a rule, delivered and paid for, unless some fresh contract has been entered into, rendering such delivery unnecessary, or deferring the completion of the original contract. This completion of the contract is not necessarily carried out between the original parties to it; for the seller may have bought similar stock from some other person, and he in like manner from another, and so through several hands; so that the whole series of bargains may be settled by the ultimate seller delivering to the ultimate buyer, the intermediate parties paying to one another only the differences.¹

All bargains in registered shares or stocks, when no time is specified, unless made after twelve o'clock on ticket days, are considered as being made for the existing account. Similarly with bargains in securities to bearer made before the settling day, and with all bargains in English and India stocks, &c., unless otherwise expressed.

Bargains in the scrip of a new loan or the shares of a new company are contingent on the appointment of a special settling day, which is only appointed by the Committee after it has been proved to their satisfaction that the loan is duly authorized, the scrip or bonds ready for delivery, and a due proportion of them already allotted to the public, and also that there is no fraud, misrepresentation, or suppression of material facts, and generally that no impediment exists to the settlement of the account.² Nor will the Committee recognize new bonds, stock, or other securities issued by any foreign government that has

Bargains in
scrip.

¹ Post, p. 18.

² See rules, Ch. VII.

violated the conditions of any previous public loan raised in this country, unless it shall appear to the Committee that a settlement of existing claims has been assented to by the general body of bond-holders.

Omnium.

The settling day in English omnium and scrip is two days prior to the respective days of payment of each of the several instalments, unless the payment falls on a Tuesday, in which case the settling day is on the previous Monday; but if the payment of an instalment on foreign or other scrip falls on a settling day, the settlement of such scrip takes place the day previous to the payment.

Foreign
loans quoted
abroad.

Bargains in foreign loans which are officially quoted in the country to which they belong, although having no quotation on the London Stock Exchange, are considered to be made for the ordinary settlements.

One consequence of these transactions being made for the account day is, that facilities are afforded to the public as well as to members who may take a view respecting any particular security, to avail themselves of any fluctuation in price without the necessity of transfer of the security itself. "Bulls" may buy stock, without either the intention or the ability to pay for it, in the hope that before settling day they may sell again at a profit; and "bears" may sell securities which they do not possess, in the expectation that before that day they may buy them cheaper. If, however, the market should tend unfavourably, or if for any other reason it should be found desirable, an arrangement may be made to postpone the completion of the contract until the following settling day. This is called "continuation" or "carrying over," and is practically effected, we will suppose by the bull, or speculative buyer, as follows: The vendor of the stock (in consideration of

Bulls.

Bears.

Continua-
tion.

a payment made to him by the buyer) enters into two contracts with the buyer; one, a contract for the purchase of the same amount of the stock as he has contracted to sell (such contract to be completed on the settling day, so as to cancel the subsisting contract), and the other, a fresh contract for the sale of the same amount of stock, to be completed on the subsequent settling day. The result is that the vendor and purchaser stand in precisely the same position as if there had been no previous contract (except as regards payment of the consideration), because the difference between the original contract price and the price at which the carrying over is effected must be paid at once, that is to say, on the settling day. The nominal price of the security at which the carrying over is effected would obviously be quite immaterial to the parties, since the two contracts balance one another, were it not that this difference is payable immediately. Being payable immediately, more bargaining would become necessary to fix the price for the new contracts; but this is obviated by the publication of a list of "making-up prices," which are, in round figures, the approximate values of all the recognized securities on that day, as settled by the clerks of the House in the various markets, and are usually based upon the average price of the first two or three hours of the day. In case of any dispute as to the making up prices, or of any omission in fixing them, the clerk acts upon the decision of two members of the Committee. All continuations must be effected at these prices, or, where no such price has been fixed, at the then existing market price.

Making up
prices.

The consideration thus paid by the buyer, for which the vendor agrees to postpone the delivery of the stock he has sold to a future specified date, is called a "contango"; on the other hand, a "back-

wardation " is the premium paid by a seller of stock for the privilege of postponing his delivery of such stock from and to a specified date.

Contango.

Inasmuch as the vendor and purchaser stand in the same position after the continuation as if there had been no previous contract, the continuation may equally be effected between persons other than the parties to the previous contract, and this is frequently the case. Let us suppose that a "bull account" exists in the particular stock with which we have to deal, that is, that the amount of stock bought for the settlement is greater than the buyers are prepared to take up (we may here premise that every bargain in the stock must be and is settled on the account day); a person who has bought stock for which he is unable or unwilling to pay must then find someone who, for a consideration, is willing to stand in his place by taking up such stock at the making up price, and holding it for a specified time, charging a rate of interest for the money employed, and holding the stock as security; the real buyer engaging at the end of that time to take possession of the stock by repayment of the money.

The continuation may of course be effected outside the Stock Exchange, but for its more easy explanation, we will suppose that a purchaser has given his broker instructions to continue the stock for which he is liable to pay, and that the broker carries out the transaction with a member of the House. This carrying over is, as we have seen, not necessarily effected with the dealer from whom the original purchase was made, though this is very generally the case, but the broker finds some dealer in this stock who has money to employ, or who is out of the stock, and agrees with him for the accommodation at the market rate. The broker then renders a contract to his client, showing the sale of his stock

at the making-up price for the current account, and its repurchase for the next account at the same price, but with an addition representing the value of the money practically borrowed by his client, together with the monetary consideration, if any, for the accommodation; and, in the case of registered securities, if the lender of the money is obliged to take them into his own name, this will include the cost of stamps and transfer fees, from the payment of which the client is *pro tempore* relieved. It is this difference between the price of sale for the current account and the actual buying price for the next account which is called a "contango," and this, as will be easily seen, will be regulated partly by the nature of the security, partly by the value of money, and partly by the demand existing for such accommodation; and will also be affected by the individual credit of the person seeking the accommodation.

Conversely, let us suppose a "bear account" to exist in the stock: here the amount of stock sold for the settlement is greater than the sellers are able to deliver, and the bear will have to find some one who, for a consideration, is willing to supply stock which will enable him to complete his bargain. There are three classes of persons who will be able to render the bear this assistance; first, the speculative buyer who is unable to complete his bargain, and is, therefore, anxious to continue; secondly, the buyer who, though able to complete his bargain, is willing, for a consideration, to defer such completion to a future day; and thirdly, in the last resort, the genuine holder of stock who is willing to accept a premium for the loan of his stock for a specified time. In these cases the broker having similarly effected the continuation, renders a contract to his bear client, showing the purchase of his stock at the making-up price for the

Backwarda-
tion.

current account, and its resale for the next account at a lower price. The difference between these prices is called "backwardation," and represents the premium paid by the bear for the loan of the stock, *less* the value of the money which is here supposed to be advanced by the bear; and here again this amount may include the cost of stamps and transfer fees, which will be payable by the holder who lends his stock, on its retransfer to him.

It will be observed, therefore, that it does not necessarily follow either that the buyer will have to pay contango, or the seller backwardation, when they are desirous of carrying over their stock; for if the former has bought for an account at which it is found that more of the stock has been sold than can be delivered, he will be in a position to postpone payment, and at the same time to receive backwardation for the temporary loan of the stock which he has bought; and conversely, in the case of a bull account, the latter may receive contango for postponing the delivery of stock sold.

Distinction
between
loans and
continua-
tions.

The taking in of stock by way of continuation must not be confounded with the case of an ordinary loan of money upon the security of the stock. The taker in of stock becomes the purchaser of it for the current account,¹ and the property passes to him, but coupled with a concurrent obligation to deliver back a like amount of stock on the ensuing account—the purchase of the stock and the obligation to deliver back is one transaction; but the entry in the books of a member might not show whether such a transaction was a purchase or a taking in. The taker in is therefore entitled to sell or deal with the stock as his own. In cases of loans, on the other hand, the lender is not

¹ See *Allen v. Graves*, L. R., 5 Q. B. 478.

entitled to place beyond his control shares or stock received as security for money advanced; and he may, after reasonable notice, and upon payment of the principal together with interest up to the time for which the loan was originally made, be required to return the identical bonds, or to re-transfer the shares or stock given as security for the loan. The lender of the money becomes a pawnee of the property, and is not entitled to sell it until the debt for which it is pledged becomes payable, and if he does so, the owner has a right to charge the pawnee with the price he gets for the property, if he finds it to his interest to do so; there is, however, nothing to prevent the pawnee from transferring the security during the currency of the loan and raising money upon it by way of sub-mortgage or otherwise, provided that he do not place it beyond his control.¹

Loans, dealing with the security.

Security to be returned when required.

If a person is desirous of carrying over, he must of course announce his intention before the account day. The day which is fixed as "carrying-over" day is the next day but one before the account day, and on that day the announcement must be made, and the continuation effected. The reason of this is that the settlement practically commences on that day, for although we have hitherto considered it as being effected in one day, there is really a great deal of work to be done preparatory to the payment and delivery on the account day, and this work is commenced two days previously, so that the settlement actually extends over three days.

Carrying-over day.

The carrying-over day, or first day of the settlement, is called the "making-up" day. On that day a process is commenced with a view to facilitate the work of the account day. The clerk of any member who

Making-up day.

¹ *Langton v. Waite*, L. R., 6 Eq. 165; Ib. 4 Ch. 402.

has both to take and deliver the same stock in the House will inquire of those from whom he has bought (or to whom he has sold, as the case may be,) the names of any members from whom they take the stock; should any one of these prove to be one of the members to whom the former has to deliver any of the stock, the bargain may pro tanto be "made up" between them on notifying the fact to this third member, and for the amount so made up no stock need pass; or, by inquiry from this third member, should he not happen to be one to whom the former has to deliver, the bargain may be traced to such a member, and thus made up. No making up is binding except at the fixed making-up prices of the day.¹

Ticket day.

The second day of the settlement is called the "name day," or "ticket day." On that day the process commenced on the making-up day is continued in a more effectual manner, so as to bring all the ultimate buyers and ultimate sellers into contact with one another. This is done in the following manner: A buying broker who wishes to take up his security, if it be one which is deliverable by deed of transfer, must issue a ticket with his own name upon it as payer of the purchase-money, and with the date, the amount of the stock, and the name of the member to whom it is issued. The ticket must also specify the price of the stock, and the name, address, and description of the transferee in full. This ticket must be issued before twelve o'clock,² and may be issued and passed even on the making-up day. It is passed by the purchasing member to his immediate seller, and each intermediate seller in succession endorses the name of his

**Passing
names.**

¹ Ante, p. 11.

² Post, p. 60.

seller, and passes on the ticket, which thus finally comes to the hands of the intending transferor, and must be left with him before half-past one o'clock. If the amount represented by any ticket has been bought by any one of the intermediate parties from more than one person, the ticket must be "split," and new tickets passed representing the different portions of the original amount. In the case of securities to bearer, a ticket may be issued up to two o'clock, and passed from hand to hand in the Stock Exchange¹ till three, the holder at this time being compelled to deliver the securities. It does not specify any price; these accounts being settled² at the making up price of the day. Splitting is also not allowed in the case of tickets for securities to bearer, odd amounts being settled without any tickets if necessary.³

Splitting
tickets.

On this day also all bargains in registered securities, for which no ticket has been passed, are brought down and temporarily adjusted at the making-up price of the day, the difference being paid just as in the case of a formal carrying over. This adjustment is repeated on each subsequent settling day until the transaction is closed, but unless the bargain is settled and a name passed within the three following accounts, it is considered as absolutely made up and closed so far as intermediate parties are concerned.

Unsettled
bargains in
registered
securities.

¹ A seller cannot be compelled to accept a ticket at his office after half-past two.

² Post, p. 18.

³ In the case of securities to bearer, the tickets must bear distinctive numbers and be for the following amounts, viz.:—1,000*l.* stock, or multiples of 1,000*l.* up to 5,000*l.*; 1,000*l.* Italian stock, or multiples thereof up to 5,000*l.*;

also 800*l.*, or multiples thereof up to 4,800*l.*; \$5,000 American stock, or multiples thereof, up to \$25,000; Fcs. 1,500 French 3 per cent. rentes, or multiples thereof, up to fcs. 6,000; 10 shares, or multiples thereof, up to 100.

Tickets for 500*l.* stock may be passed for bargains, or balances of that amount.

Settling
day.

Then on the third and last day of the settlement (called the "account day" or "pay day") the delivery of securities commences at ten o'clock, and the actual payment takes place of what are called "differences." The payment of differences on carrying over has been already described.¹ On an actual sale,

Differences.

the payment of differences consists, as between any two of the intermediate parties, in their handing over, instead of the entire price of the security dealt in, the difference only between the ultimate purchase price if named on the ticket, and the price at which, as between themselves, the bargain was done. If no price is named on the ticket, that is to say, if the dealing is in a security to bearer, then the difference payable is that between the making-up price of the day and the price at which, as between themselves, the bargain was done.

Payment of
purchase-
money.

The residue of the purchase-money then remains to be paid by the ultimate purchasing member to the ultimate seller. This payment does not become due until actual transfer of the property, which may perhaps not happen until some subsequent day, and if the security is not presented before half-past two o'clock (or one o'clock on Saturdays), payment cannot be demanded till the following day; but since all securities are supposed to be delivered on the account day—and securities to bearer generally are so—the purchase-money will also frequently become payable on that day. Securities to bearer, where a ticket has been passed, must be delivered before half-past one o'clock; and where a ticket has been refused by the seller, they must be delivered before half-past twelve. In the case of registered securities it is considered reasonable that a certain time should be

¹ Ante, p. 11.

allowed for the selling broker to get the transfer deeds executed, which may require the signatures of perhaps four persons, all residing at a distance. Accordingly, by the rules, ten days are allowed within which to deliver such transfers.¹

On this day, also, all bargains in securities to bearer, which have not been settled by the delivery of the security, are brought down, and temporarily adjusted at prices fixed by the clerk of the House at half-past two o'clock, and the differences paid in the usual manner.

Unsettled
bargains in
securities to
bearer.

There is one more form of contract in use on the Stock Exchange, known as an "option," which it may be well to notice here. This is a contract under which a person, on consideration of a payment of "option money" to the contractee, acquires the right to deal with him on a fixed future date, in a specified amount of a certain stock, at a price agreed on at the time. Options are of three kinds: first, a "put," which gives the option of placing or selling stock, or not, on the day fixed, at the agreed price, and is therefore akin to a bear transaction; secondly, a "call," which gives the option of calling for or buying stock, or not, on the day fixed, and is the converse of the "put;" and, thirdly, the "put and call," which is a combination of the preceding two, and for which, therefore, the premium or option money is usually about double. Options must be declared, that is to say, the giver of the money must announce his intention of exercising or abandoning his right to deal at a quarter before

Options.

Put.

Call.

Put and
call.

¹ Transfer receipts for English and India stocks, &c., bought for a specified day, must be delivered by a quarter before four o'clock, or by half-past one o'clock on

Saturdays.

Omnium or scrip, not paid in full, must be delivered before two o'clock, or by one o'clock on Saturdays.

three o'clock on the day before the ticket day of the account for which the bargain has been made. If the option has been made for a special day and not for the account, it must be declared at a quarter to three on that day. In either case the premium, or option money, is payable on the following settling day.

**Business in
options.**

It may often be to the advantage of an intending bonâ fide purchaser of stock to take money for the put of it at a future date, instead of making an immediate purchase. This would be the case where the stock is quoted at a higher price than the intending purchaser is prepared to give, while he would be glad to buy at a reduction equal to the market price of the option. If he then takes the option money for the put at the price of the day, he is in this position :—On the day when the option has to be declared, if the price has risen in the meanwhile, he has profited by securing the option money, and if the price has fallen, he finds the stock put upon him, but the nett cost of it (deducting the option money received), is no more than we have assumed him to be willing to pay for the security. And conversely an intending seller may take money for the call, and should the price fall so that the stock is not called of him, he will reduce the price of his holding by the amount of the option money.

**Gaming
contracts.**

To what extent these options would be held void at law, as being by way of gaming or wagering, is a question not free from difficulty.

It is provided by statute¹ "that all contracts and agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any

¹ 8 & 9 Vict. c. 109, s. 18.

Court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made.”

It is to be observed that this enactment does not make the contracts themselves illegal; it only provides that they are null and void, and that no action can be maintained upon them. It differs in this respect very materially from the old statute, known as Sir John Barnard’s Act,¹ by which contracts of this nature were forbidden under a penalty, and where, therefore, no claim in any way arising out of such a contract could be enforced at law, because tainted with illegality.²

The test by which to decide whether an option, or any other form of contract on the Stock Exchange, falls within this provision may be found in the question left to the jury by Jervis, C. J., in the case of *Grisewood v. Blane*.³ This was an action by a stockjobber against a person who had, through his broker, contracted to sell certain shares to him, had carried over, and had afterwards bought them back at a loss, but refused to pay the difference, relying on the above Act of Parliament. The Lord Chief Justice left it to the jury to say what was the intention of the parties at the time of making the contract; whether either party really meant to purchase or to sell the shares in question; telling them that, if they did not, the contract was a gambling transaction, and void. The jury found for the defendant, and the Court afterwards refused to grant a new trial, holding that the true question had been

*Grisewood v.
Blane.*

¹ 10 Geo. 2, c. 8, repealed in 1860 by the 23 Vict. c. 28.

² *E.g.*, broker’s commission; see p. 42.

³ 11 C. B. 538.

left to the jury, and that they had been abundantly justified in coming to the conclusion that it was a gaming transaction.¹

Continuations not within the statute.

This case does not seem to have ever been over-ruled,² and it may therefore be taken to be established that where neither of the ultimate contracting parties has in view a real purchase or sale, but a payment of a difference according to the rise or fall in price is alone contemplated, then the contract would, as between them, not be enforceable at law. This, as we shall see, does not affect the rights of the brokers or intermediate parties who have entered into real contracts which they are liable to complete according to the rules of the Stock Exchange. Nor does it touch the question of the payment of differences on continuing stock, where, for instance, as we have explained, a bull may have procured someone to lend money upon a security *bonâ fide* deposited, and may become liable to pay a difference if it falls in price. A transaction of this sort was held void by a Commissioner in Bankruptcy, but on appeal to the Lords Justices his decision was reversed.³

Another case⁴ was argued at the same time before the Lords Justices, in which a broker who held certain shares had sold them to another broker at a fixed price, and on each settling day after the sale differences were paid, sometimes by the one, sometimes by the other, according as the price fluctuated, until at last the selling broker kept the shares at their value and claimed the final difference, which the purchasing broker was unable to pay, and, before action brought, he had been declared a de-

¹ See also *Rosewarne v. Billing*, 15 C. B., N. S. 316.

² But see *Marten v. Gibbon*, 33 L. T., N. S. 563, per Bramwell, C. J.

³ *Ex parte Phillips*, 30 L. J., Bkptcy. 1.

⁴ *Ex parte Marnham*, 30 L. J., Bkptcy. 3.

faulted, and had ceased to be a member of the Stock Exchange. There was in this case no delivery of shares, and Turner, L. J., said, that if the case had rested there he should have felt considerable doubt about it, and that, having regard to the case of *Grisewood v. Blane*, he would possibly not have allowed the claim without some further investigation before a jury or otherwise; but it appeared that when any dividends were paid on the shares they were accounted for to the buyer, and also, on one occasion, the seller did buy back some of the shares from the buyer at their then market value, and accounted to him for the price. The learned Lord Justice added that the mere payment of dividends might not perhaps have altered the case, as it was not necessarily inconsistent with the whole transaction having been fictitious, and a mere cover for the payment of the differences; but he thought the repurchase of some of the shares, and the payment of their price, were facts inconsistent with that view, which stamped the transaction with the character of reality, and the claim was therefore allowed.

Again, in the recent case of *Thacker v. Hardy*,¹ a claim was made by a broker, who had failed and whose accounts had been closed compulsorily, against his principals, to recover the balance due, and the claim was resisted on the ground that it arose out of gaming transactions. The facts found at the trial were, that the principals were speculators to the knowledge of the broker, and that they employed him to speculate for them on the Stock Exchange, and that the principals knew that they incurred the risk of having to accept or deliver as the case might be, but were content to run that risk in the expectation

*Thacker v.
Hardy.*

¹ 27 W. R. 158.

and hope that the broker would be able so to arrange matters that nothing but differences should become actually payable to or by them, as the case might be. This arrangement rendered it necessary for the broker to enter into real contracts of purchase and sale with jobbers; and in respect of these contracts he incurred obligations against which the principals were held bound to indemnify him, inasmuch as the transactions, even if voidable as being by way of gaming, were not illegal; judgment was therefore given in favour of the broker, and was subsequently affirmed by the Court of Appeal.¹

Put and call
options.

Upon considerations of this nature will depend the question whether, in any particular case, an option is void as a wager; but it is conceived that it would hardly ever be possible to enforce by law a contract for an option in its usual form on the Stock Exchange; for the object of such a contract is usually nothing more than to afford a sort of hedge behind which the speculator may operate to take advantage of fluctuations with a view to profit by differences quite independently of any bonâ fide transfer of stock. On the other hand, there may be cases where even a "put and call" may be contracted for with the real intention of transferring stock. Let us suppose a person who is possessed of certain securities to be desirous of selling if he could get a bid, say one per cent. higher than the present price, and to be at the same time desirous of doubling his holding if he could buy at a price one per cent. lower. If he gives instructions in this form to his broker, it may well happen that the price does not fluctuate sufficiently to make it possible to carry out either transaction. But the same practical result may be attained

¹ 27 W. R. 158; see also *Cooper v. Neil*, *ib.* p. 159.

with certainty by the owner of the securities taking a one per cent. price for the put and call of them, for the money thus received would be, as it were, a reduction of one per cent. in the purchase price if the security is put upon him, and would equally, as it were, go to increase the selling price if it is called from him. There is, of course, this difference, that if the security is at precisely the same price on the option day as on the day the bargain was made, it may happen that the security is neither put nor called, and in that case the owner will have secured his one per cent. without further liability, and be in a position to repeat the process. Under such circumstances the option could not be said to be void as a wager.

These remarks as to the voidability of contracts of this nature do not, of course, apply to bargains made between members of the Stock Exchange, for they are bound by their rules, as we shall see hereafter, to refer their disputes to a tribunal which does not afford to persons dissatisfied with their contracts such facilities for repudiating them.

Another statute may be noticed here, under which certain contracts for purchase or sale of shares in joint-stock banks are rendered void. It is commonly known as Mr. Leeman's Act, and was passed in the year 1867,¹ but seems to have been completely disregarded upon the Stock Exchange. Nor does it appear to have been the subject of any decisions in the law courts; but since, in the wording of the enacting part, it is similar to the Gaming Act already alluded to, it is presumed that any contract within this Act would be subject to the same incidents as a contract by way of gaming. The enactment is,

Leeman's
Act.

¹ 30 Vict. c. 29.

"That all contracts, agreements, and tokens of sale and purchase which shall be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or any stock or other interest, in any joint-stock banking company in the United Kingdom of Great Britain and Ireland, constituted under or regulated by the provisions of an Act of Parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or where there is no such register of shares or stock by distinguishing numbers, then, unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanor, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment."

CHAPTER II.

PRINCIPAL AND BROKER.

THE first step in the transaction we propose to follow out is the order given by the principal to his broker. And in accordance with the general rule of law that a person who deals in a particular market must be taken to deal according to the custom of that market,¹ the principal will be taken as intending that his order shall be carried out according to the general usages of the Stock Exchange,² assuming, of course, that they are not illegal or wholly unreasonable; and it has been further held that the order itself may, as between the principal and broker, be explained by evidence of those usages.

The order
given by
principal.

In the case of *Mitchell v. Newhall*,³ a principal had given an order to his broker for the purchase of "shares" in a company of which at the time no shares existed, but letters of allotment were commonly bought and sold on the Stock Exchange as shares; the broker accordingly bought a letter of allotment, which the principal refused, but, on action brought, he was compelled to accept, Pollock, C. B., saying, that the defendant could not avail himself of his supposed ignorance of the mode of business on the Stock Exchange; the broker had received an order from his principal to purchase for him some-

How inter-
preted.

¹ *Wigglesworth v. Dallison*,
1 Sm. L. C. 598.

² *Butten v. Tatham*, 10 A.
& E. 27; *Bayliffe v. Butter-*

worth, 1 Ex. 425; *Grissell v.*
Bristowe, L. R., 3 C. P. 112.

³ 15 M. & W. 308.

thing, and it was for the jury, after hearing evidence of the usage, to say what that something was.¹

And in the case of *Stewart v. Cauty*,² a contract for the purchase and sale of certain shares in the Great Western Railway had been made among parties who were none of them members of the Stock Exchange; and still, evidence of the rules was held admissible in interpreting the contract as a guide to the determination of what was a reasonable time for delivery of the shares, but not, it is true, as being binding upon the parties.

Where evidence of usage not admissible.

On the other hand, a custom which is contrary to the law of the land will not be allowed to control the law; nor will a person who is not a member of the Stock Exchange be allowed to be prejudiced by any usage which is not reasonable, unless specially assented to, so as to form part of the contract; and it may further be that some of the usages of the Exchange, which relate rather to matters of practice and mutual convenience amongst the members themselves, might be held to be not of such general nature as to bind third parties who are not aware of them.³

Duty of broker to act in accordance with usage.

Conversely, a broker cannot bind his principal by transacting business in any other than the ordinary method, unless by express consent. Thus, for example, if stock be usually sold for ready money, he cannot bind his principal by a sale upon credit unless specially authorized, although by giving credit he may be acting *bonâ fide* with a view to benefit his principal;⁴ or if stock be usually sold for the ensuing account, he cannot bind his principal by dealing for a future account, or by carrying over, unless autho-

¹ See also *Morris v. Hunter*, 14 L. T., N. S. 897.

² 8 M. & W. 160.

³ See *Sweeting v. Pearce*, 7 C. B., N. S. 449; *Meyer v. Dresser*, 16 C. B., N. S. 646;

Grissell v. Bristowe, L. R., 3 C. P. at p. 128; and *Robinson v. Mollett*, L. R., 7 H. L. 802.

⁴ *Wiltshire v. Sims*, 1 Camp. 258; *Brown v. Boorman*, 11 Cl. & Fin. 1.

rized to do so.¹ Or again, if the broker grant any indulgence to the jobber in respect of delivery of stock or otherwise, by refraining from buying in or selling out against him, he must do so at his own risk.²

Questions may still arise as to the extent to which private instructions given to the broker would be allowed to limit the general authority which he receives to deal according to the custom of the Exchange; but it is submitted that no such instructions would affect the rights of third persons who, without notice, have dealt with the broker in the usual course of business in the House.³ Still, it seems clear that there is nothing to prevent a principal making with his broker any contract they please so as to be binding as between themselves, even though expressly contrary to the rules made by the Stock Exchange for the regulation of contracts between their own members.

It would not be out of place here to notice a curious case which occurred in the winding-up of a banking company, the directors of which had given orders to their broker to buy on behalf of the bank a round number of their own shares, with a view to keep up the price. This order was wholly ultra vires, but was executed by the broker in due course, some of the shares being taken and paid for by the directors and their friends, but the rest were transferred to a trustee for the company, and the broker's account with the bank was credited with the price. The question which came before the Court was whether this amount could be proved for in the winding-up. Lord Romilly, M. R., thought that the proof should be admitted,⁴ for it was not the duty or the business

Special
terms.

Where
order
illegal.

¹ *Mazted v. Paine*, L. R., 4 Ex. 81; *Mazted v. Morris*, 21 L. T., N. S. 535.

² See *Fletcher v. Marshall*,

15 M. & W. 755, post, p. 44.

³ See *Crabb v. Miller*, 24 L. T., N. S. 219.

⁴ *Re London, Hamburg and*

of the broker to decide whether the directors were or were not exceeding their powers; and, moreover, the transaction was concluded and the money paid; so that the only remedy of the shareholders should be to require the directors personally to refund it. This decision was, however, reversed on appeal.¹ The transaction was held to be wholly and totally void; the broker had dealt with the directors as agents of the company; the directors were bound to act within the scope of their authority; and the broker was bound to know that they were acting ultra vires. The proof was, therefore, disallowed, and it seems that even if the money had been actually paid over to the broker by the directors he would have been liable to refund it.²

Broker as agent.

The broker, on receipt of the order, becomes the agent of the principal, and all the ordinary and general principles of the law of agency apply as between them; although, on the Stock Exchange, as we shall see hereafter, this agency is not recognized and the broker deals as a principal. There is, accordingly, a request implied by the principal to the broker, that he shall discharge on his behalf any liability necessarily³ incurred in entering into contracts as his agent according to the rules of the Stock Exchange (unless the rules be illegal or wholly unreasonable). Any amount so paid becomes a debt due by the principal to the broker, and there is an implied contract by the principal to repay it, and to indemnify the broker against any loss which, by the course of business, he may be compelled to pay;

Implied contract of indemnity.

Continental Exchange Bank, Zulueta's claim, L. R., 9 Eq. 270.

¹ L. R., 5 Ch. 444.

² For case of an illegal company, see *Josephs v. Pebrer*, 3 B. & C. 639.

³ See *Clegg v. Townsend*, 16 L. T., N. S. 180, where the costs of defending a virtually undefended action on behalf of the principal, were held not to be recoverable.

provided, of course, that it has been incurred without any default on the part of the broker himself. The right of the broker to recover money so paid does not depend upon whether he is or is not duly licensed,¹ and stands, therefore, in this respect on a different footing from his right to commission.²

This has been established by a long series of cases, of which the earliest seems to be *Child v. Morley*,³ where the principal had refused to accept a bargain made by his authority, and the broker had, in accordance with the rules, been obliged to pay the difference due on a buying in against him on the Stock Exchange. The broker declared in assumpsit for money paid to the use of the principal, and it is true that he failed to recover in that form of action, yet the Court expressed a strong opinion that the broker ought to have a remedy; and this case was afterwards said by Bosanquet, J., in *Young v. Cole*,⁴ to have established the principle, that the client was bound to reimburse the broker what he was thus compelled to pay.

*Young v. Cole*⁴ was an action brought by a broker against his employer to recover the proceeds of some Guatemala bonds which he had sold for him in the market. The bonds, after being a short time in the purchaser's possession, were found to be unmarketable owing to their want of stamps, and no one could be found in this country who had authority to stamp them. Upon this being disclosed to the broker, he took them back and reimbursed the purchaser without communicating with the defendant. It was held that the broker was entitled to recover the amount he had handed to his principal, not on the ground of a breach of warranty by the principal, but on the

¹ *Pidgeon v. Burslem*, 3 Ex. 470; *Smith v. Lindo*, 5 C. B., N. S. 587.

² Post, p. 42.

³ 8 T. R. 610.

⁴ 3 Bing. N. C. 724.

ground that the consideration on which it had been handed over had failed, the defendant having delivered something which, though resembling the article contracted to be sold, was of no value, and that the re-payment made by the broker to the purchaser was necessary, according to the custom of the Stock Exchange.

*Sutton v.
Tatham.*

This was followed by *Sutton v. Tatham*,¹ where a principal had instructed his broker to sell 250 shares in a company. The sale was effected on the following day, and afterwards, during that day, the principal called on his broker to inform him that he had made a mistake, that he had only 50 shares, and only wished to sell that number. The purchaser declined to accede to the request of the broker, and cancel the bargain and, according to the rule, bought in 200 shares on settling day against him. The broker repaid the loss and commission consequent on the buying in, and was held entitled to recover the amount in an action against the principal. In this case the principal was proved to have known of the rule in question; but in a subsequent case, *Bayliffe v. Butterworth*,² where a broker succeeded in an action brought under very similar circumstances, there was some evidence at the trial upon which the jury might have found that the principal was cognizant of the rule, but the point was not raised until the case came before the Court in banc, where they did not therefore consider it necessary to decide it, but nevertheless expressed a strong opinion that such knowledge is immaterial.

*Bayliffe v.
Butterworth.*

*Pollock v.
Stables.*

The decision in *Bayliffe v. Butterworth* was afterwards approved of and acted upon in *Pollock v. Stables*,³ where a principal was unable to pay, on settling day, for shares which he had instructed his

¹ 10 A. & E. 27.

² 1 Ex. 425.

³ 12 Q. B. 765.

broker to buy. The vendor sold out, the broker paid the difference, and recovered it in this action from the principal, although it did not distinctly appear whether or not the principal was acquainted with the custom, nor was it shown that he received any notice of the vendor's intention to sell out.

Bayley *v.* Wilkins¹ was an action brought by a broker against his principal under the following circumstances. The principal had employed the broker to buy certain shares for him, upon which a call had been made, but was not then payable. The seller being obliged to pay this call in order to become entitled to transfer the shares, the broker repaid the amount to the seller, and claimed it in this action from the principal, who resisted on the ground that he was ignorant of the fact of a call having been made at the time he contracted to buy the shares. The Court held that, the object of the purchaser being to obtain the shares with all the responsibilities that legally attached to them, he was liable to pay to the broker any sum beyond the stipulated price which the regulations of the company subjected them to.

*Bayley v.
Wilkins.*

Again, in the case of Taylor *v.* Stray,² the same principle is illustrated. A broker had bought for his client some shares in a bank which subsequently, but before settling day, stopped payment, whereupon the directors refused nearly all applications made to them to allow transfers of shares. The broker received a notice from his client's solicitor not to pay the purchase-money, but stamped transfers and certificates were handed to him by the seller, and he was obliged to pay. On action brought to recover the amount from his client, it was held that although if

*Taylor v.
Stray.*

¹ 7 C. B. 886.

² 2 C. B., N. S. 175.

there had been an absolute refusal on the part of the directors to recognize these particular transfers, and if that had been known to the broker at the time he paid the money, whatever the reason for the refusal might have been, then the subsequent payment might have been a payment by the broker in his own wrong; yet in this case the broker had acted rightly in making himself personally responsible for the payment of the money at a stage preceding that on which the consent of the directors could be asked for, and that, therefore, he was entitled to call upon his client to reimburse him.¹

*Chapman v.
Shepherd.*

This case was followed in *Chapman v. Shepherd*, and *Whitehead v. Izod*,² where the circumstances were practically the same as in *Taylor v. Stray*, with the exception that a petition for winding-up the company under the Companies Act of 1862, was presented also before the settling day. It was objected by the defendants that the transactions were absolutely void under the 153rd section of that Act,³ unless otherwise ordered by the Court, and that the transfers when tendered to the brokers were, therefore, mere waste paper, so that the brokers were not justified in paying over the purchase-money, and could not, therefore, recover against their principals. The Court decided that the statute did not avoid the contract; and Willes, J., put this test:—Could the buyer have insisted upon receiving the transfers and certificates under the circumstances which have occurred? It is clear that he could, because he would be at liberty to make an application to the Court that he might be declared a shareholder in the

¹ See *Smith v. Lindo*, 5 C. B., N. S. 587.

² L. R., 2 C. P. 228.

³ 25 & 26 Vict. c. 89, s. 153.

company; and, having this conditional right, he could not be allowed to object that the contract was void, before he had taken the step required to ascertain whether he could not be declared a shareholder. The Court, therefore, held that since the payments were made by the brokers before the contracts were thus ascertained to be void, they were recoverable in the actions. It is to be observed that, according to more recent authority, the non-registration under such circumstances would not render the contracts void, and the question of the broker's right to recover would present less difficulty.

Very shortly afterwards came the case of *Biederman v. Stone*,¹ which very much resembled the two preceding ones. The action was by a broker against his principal for indemnity against loss incurred in consequence of the refusal by the principal to execute a transfer of certain shares which the broker had sold under his instructions, and which were in due course "bought in" on the failure of the broker to deliver. This case differed from the preceding ones in this, that the company had to the knowledge of all parties commenced winding-up voluntarily before the transaction was entered into. The defendant here relied on the 131st section of the Companies Act of 1862,² which provides that all transfers taking place after the commencement of the winding-up are void, unless made with the sanction of the liquidators, and he refused to execute a transfer unless the purchaser of the shares first obtained their sanction. The Court held that the seller was bound to execute the transfer quantum valeat, and was therefore liable to indemnify the broker for the loss consequent on his refusal to execute.

*Biederman
v. Stone.*

¹ L. R., 2 C. P. 506.

² 25 & 26 Vict. c. 89, s.131.

*Westropp v.
Solomon.*

This implied promise to indemnify cannot of course be extended to liabilities incurred by the broker in consequence of rules made by the Stock Exchange under such circumstances as that the principal cannot be presumed to have known them, or to have contracted with reference to them. This was one ground of the decision in *Westropp v. Solomon*,¹ where share certificates had been sold by a broker for his principal to a jobber, but, after the proceeds had been received by the principal, they were discovered to be forgeries. The broker was called upon by a resolution of the Committee to pay to the jobber a certain agreed price as for genuine certificates, which considerably exceeded the price for which he had sold the spurious ones. On action brought by the broker against his principal for the amount, it was held that the resolution of the Committee, made after the transaction was completed, could not affect the principal, although it were binding on members of the Stock Exchange, and that, therefore, the utmost that could be recovered in the action was the actual amount which had been received by the principal.²

*Execution
of the order.*

Having received the order to buy or sell, the duty of the broker is, to use due and reasonable diligence in endeavouring to carry it out; there is no absolute undertaking on his part to carry it out at all events,³ for there may be, for example, no market for the particular securities in question.

In the case of *Lamert v. Heath*,⁴ a broker was instructed to buy for his principal some "Kentish Coast Railway Scrip," and he accordingly bought in the market the only scrip of that name, but which afterwards was denied by the directors to be

¹ 8 C. B. 345.

² See *Young v. Cole*, 3 Bing. N. C. 724.

³ *Fletcher v. Marshall*, 15 M. & W. 755.

⁴ 15 M. & W. 486.

genuine, on the ground that it had been issued by the secretary of the company without their authority. On action brought by the principal to recover the amount from his broker, the only question left to the jury at the trial was, whether the scrip was genuine or not; but the Court of Exchequer held that the proper question for the jury was, whether the plaintiff got what he contracted to buy,¹ and a new trial was granted accordingly.

The broker is again bound by the general rule respecting all agencies, which forbids the agent to take to himself that which he is instructed to sell and give credit for the amount of the price, or conversely to be himself the seller of that which he is instructed to buy on behalf of his principal, unless he deals with him fully and fairly at arm's length, and makes a full disclosure of everything he knows concerning the matter. If he do make this disclosure, the relation of principal and agent between them is determined so far as that transaction is concerned. If he do not, he cannot truly say that by dealing with himself he has carried out the instructions of his principal, and the delivery of a contract note would therefore be an untrue representation upon which the principal could recover the money paid to the broker.² The principal has, moreover, the right to choose whether he will adopt the bargain and claim for himself any benefit that the broker may have made out of it, or whether he will repudiate the transaction altogether and claim the return of his money.³ The rule is the same, although

Broker
must act at
arm's
length.

¹ See *Mitchell v. Newhall*, 15 M. & W. 308, ante, p. 27; *Tempest v. Kilner*, 3 C. B. 253; *Hunt v. Gunn*, 13 C. B., N. S. 227.

² *Wilson v. Short*, 6 Hare, 366; *Ex parte Dyster*, 2 Rose, 349.

³ See notes to *Fox v. Mackreth*, 1 L. C., Eq. 123.

it be made to appear that no advantage has been gained, or intended to be gained, by the broker; because, although one may see in a particular case that this is so, yet it is utterly impossible in the majority of cases to examine upon evidence whether advantage has or has not been gained by him.

*Brookman v.
Rothschild.*

A transaction of this nature was set aside in the celebrated case of *Brookman v. Rothschild*.¹ The plaintiff wrote to the defendant for advice respecting some investments, and the defendant advised him to sell certain French rentes, and to buy Prussian bonds. Further correspondence ensued, and in the result, according to the view taken by the Courts, the defendant became the plaintiff's agent to carry out these suggestions; and therefore, practically, the relationship between them was the same as that between principal and broker. The defendant being a very large dealer in French rentes caused them to be sold to himself, without the plaintiff's knowledge, but at the market price; and further, being the contractor for the Prussian loan, and having a large number of these bonds in his hands, he sold them himself at the market price of the day to the plaintiff, but transmitted accounts to him in which it did not appear that he had not bought the bonds from third persons. No particular bonds were appropriated to the plaintiff, it being part of the agreement that the bonds were to be deposited with the defendant as security for the purchase-money. Many more dealings of the same nature took place, and ultimately a large balance was paid by plaintiff to defendant. Four years afterwards the plaintiff discovered that his French rentes had been purchased by the defendant, and that no Prussian bonds had

¹ 3 Sim. 153, and 5 Bli., N. S. 165, S. C. in H. L.

ever been specifically appropriated to him; he therefore filed his bill, and succeeded in obtaining a decree that all the transactions be set aside, and an account taken. This was affirmed on appeal to the House of Lords.¹

So in *Gillett v. Peppercorne*,² where a principal instructed his brokers to purchase some canal shares, and they bought them from a person who, though ostensibly owner, was only a trustee for the brokers, the sale was set aside with costs.³

In all such cases the agent is bound to disclose the exact nature of his interest, if any, in the transaction; it is not enough merely to disclose that he has an interest, so as to put the principal upon inquiry. The burden of proving that a full disclosure has been made lies on the agent, and is not discharged by his merely swearing that it was made, if his evidence is contradicted by the principal and not corroborated.⁴

How long the order given to the broker will remain in force must depend upon the circumstances in each case. If a limit is given, or if the security is of the non-current class, the broker's authority would continue⁵ until countermanded; but if an order be given to deal in a current security, a jury would be at liberty to take into consideration the usage of the Stock Exchange to deal for the ensuing settling day, and to find that, when that day arrived, a reasonable time had elapsed for carrying out the order, and that the broker's authority was at an end.⁶

Duration of
agency.

¹ See also *Kimber v. Barber*, L. R., 8 Ch. 56.

² 3 Beav. 78.

³ See also *Bank of Bengal v. Macleod*, 7 Moo. P. C. C. 35; *Kimber v. Barber*, L. R., 8 Ch. 56.

⁴ *Dunne v. English*, L. R.,

18 Eq. 524.

⁵ See *Fenwick v. Buck*, 19 W. R. 597.

⁶ *Fletcher v. Marshall*, 15 M. & W. 755, post, p. 44; and see *Maxted v. Paine*, L. R., 4 Ex. 81; *Maxted v. Morris*, 21 L. T., N. S. 535.

His authority continues, however, until settling day in any case, unless countermanded, but may, of course, be countermanded by the principal at any time before the broker has acted upon it so as to alter his position.

When principal bound.

We will suppose then that, while the order is in force, the broker enters the market and makes the bargain. He then becomes responsible to the dealer, and his client is, upon the foregoing principles, liable to indemnify him, and is no longer at liberty to countermand or withdraw.

When broker bound.

The client, being thus bound, is entitled to be informed immediately of what has been done on his behalf; for although the broker is in theory bound to the principal from the moment when he has made the bargain as his agent, and is, as we have seen, liable to account to him for it, yet practically in the absence of an admission by the broker that it has been effected, the principal would in the majority of cases find it impossible to enforce his rights. If delay were allowed in thus communicating with the principal, an opportunity would be afforded to a dishonest broker to avail himself of the bargain made for his client, and, if prices tended favourably, to take to it himself, making a second bargain at a subsequent period, and treating the later one as made for his client. If this were discovered by the client, he could of course claim the profit made; but how rarely could detection be possible?

Contract note.

It is not necessary that this information should be conveyed in writing, for a contract for the sale of Stock Exchange securities is not within the Statute of Frauds; but it is usual for the broker to send a contract note to his principal. This note must not be confounded in its effect with the contract note drawn up in an ordinary transaction by a broker

who is acting as agent for both parties, and where the contract is for goods, wares, or merchandise so as to require a memorandum in writing. The stock-broker here acts for his client only, and has no authority from the jobber to bind him by delivering a contract note to his principal; so that the note is really nothing more than an account rendered to the principal of what has been done. It is a formal admission on which the principal may rely if he should require to enforce his claim against the broker.¹

The note should specify the day for delivery and settlement. It may also specify the jobber with whom the bargain has been made, which would, according to the usage of the Stock Exchange, relieve the broker from liability to his principal consequent on default of the jobber.

It is also required by the Stamp Act,² that "any note, memorandum, or writing commonly called a contract note, or by whatever name the same may be designated, for or relating to the sale or purchase of any stock or marketable security of the value of 5*l.* or upwards," shall bear a penny stamp. The stamp may be adhesive, and must be cancelled by the person by whom the note is first executed. The penalty for omission is 20*l.*; and further, the broker has no legal claim to any charge for commission unless the contract note is duly stamped; nor would the unstamped note be admissible in evidence in any court of civil judicature.³

This charge for commission is also inserted in the contract note. In most of the local Stock Exchanges the amount of broker's commission is regulated

Stamp re-
quired.

Commis-
sion.

¹ Conf. *Magee v. Atkinson*,
2 M. & W. 440.

² 33 & 34 Vict. c. 97, s. 69.

³ *Ib.* s. 16.

by a fixed tariff, but in London the charge varies slightly among different brokers. It is usually $\frac{1}{4}$ th per cent. on British and foreign funds; $\frac{1}{4}$ per cent. on American and colonial securities; on railway and other registered stocks $\frac{1}{4}$ per cent. on the consideration money; while on shares the charge is usually on a scale from one shilling per share on shares under 5*l.*, up to ten shillings per cent. on the consideration money where the shares are above 50*l.* The commission is earned and payable so soon as the broker has carried out the transaction according to the instructions of his principal, although the bargain should, owing to any circumstances independent of him, fail to be completed by the principal or other parties.¹

The broker's claim to commission has also been sanctioned in administration suits, where the amount is allowed to executors on passing their accounts.² His right to commission is conditional on his being duly licensed.³

On gaming
contracts.

Under Sir John Barnard's Act it was not possible for a broker to recover from his principal for work done or for money actually laid out for him upon transactions which were by way of gaming, because he could not establish his right except by virtue of having done something which was forbidden under a penalty, and therefore illegal.⁴ Now, however, these contracts are no longer illegal, but voidable only;⁵ and therefore there is nothing to prevent a broker from recovering money paid in respect of them at the

¹ See the cases, ante, pp. 31—35, in all of which commission was recovered by the brokers.

² *Jones v. Powell*, 6 Beav. 488; *Davenport v. Powell*, 14 Sim. 275.

³ See ante, p. 3, and *Cope v. Rowlands*, 2 M. & W. 149.

⁴ *Wells v. Porter*, 2 B. N. C. 278.

⁵ 8 & 9 Vict. c. 109, s. 18, p. 20.

request of his principal,¹ which request would always be implied in ordinary Stock Exchange transactions. And in the case of *Rosewarne v. Billing*,² the Court held that it made no difference if the broker knew that the contract entered into was void under the statute; for if one man requests another to make a wagering contract on his account, and to pay the loss if loss happens, there is a continuing request to pay until revoked. Erle, C. J., in giving judgment, expressed a doubt whether revocation would be possible in the case of a contract on the Stock Exchange, where the broker becomes personally liable to pay so soon as the contract is made; but probably he would not have doubted if the question had really presented itself for decision; for the fundamental principle upon which such questions depend is, that there is an implied contract on the part of every person who employs a broker to act for him on the Stock Exchange to indemnify the broker against all liability necessarily incurred in the ordinary course of his employment. In fact, the question whether or not any contract is void in this respect, is one which could only be raised between the ultimate contracting parties.

It is usual for the principal to hand to the broker any money that may be due to him on or before the day for which the purchase has been made, so as to keep the broker in funds to meet the payments on the Stock Exchange, for which he has, by the rules, rendered himself personally liable. The purchaser of securities cannot, however, be compelled to entrust money to his broker in this manner, nor can he compel his broker to advance it out of his own

When payment due from principal.

¹ *Jessopp v. Lutwyche*, 10 Ex. 614; *Knight v. Cambers*, 15 C. B. 562; and see *Knight*

v. Fitch, ib. 566.

² 15 C. B., N. S. 316.

pocket, for this may, perhaps, be impossible. If, owing to want of confidence, such a difficulty should arise, it may be, and is usually, met by the principal handing to the broker a conditional order on his bankers to pay the amount on receipt of the securities or of the transfer deeds executed by the transferor.

Money entrusted to broker.

If money is entrusted by the principal into the hands of his broker for investment, the relationship created between them is not merely that of creditor and debtor, and must not be treated as analogous to that between a banker and his customer, but the money is considered as having been entrusted by the principal to his agent in a fiduciary character to be applied in a particular way; consequently, if the broker stops payment with such money in his hands, the principal is entitled to follow the money, and, so far as it can be traced, to claim the return of it;¹ though no doubt the practical difficulty of tracing money if once paid by the broker into his banking account will generally limit the remedy of the principal to his claim as a general creditor in the liquidation. This difficulty does not, of course, affect the legal right of the principal to the money, or to any securities or other property which can be shown to have been directly purchased with it.

Fletcher v. Marshall.

In the case of *Fletcher v. Marshall*,² a principal had lodged money in the hands of his broker to procure certain shares; the broker immediately made a bargain for the purchase on the Manchester Stock Exchange, in accordance with his instructions, and forwarded a bought note to the principal; but nine days after the next settling day (and twenty-four

¹ *Taylor v. Plumer*, 3 M. Ch. D. 123.
& S. 562; *Ex parte Cooke*, 4 ² 15 M. & W. 755.

days after the order was given), when the principal demanded his shares, he was informed that although scrip had been issued, none had yet been forwarded to the Exchange, so that they were unable to obtain delivery of it. The principal accordingly demanded the return of his money, and it was held that he had unquestionably a right to countermand the application of his money which was still in the broker's hands, the original contract between principal and broker being at an end on the failure to deliver scrip within a reasonable time. In this case the bought note did not specify any day for delivery, but the jury found that a reasonable time had elapsed for that purpose, proceeding no doubt upon the ground that the settling day was the proper day for delivery. The case illustrates the relationship between principal and broker; but it is, happily, not probable that such a verdict should be given in any case arising out of a transaction on the London Stock Exchange, for it is usual for the Committee to fix special settling days for the scrip of new issues, and the broker usually draws up the bought note accordingly. It may be clearly inferred from the above case, that where a broker has in the usual manner specified on the bought note a day for delivery, and neglects on that day to enforce delivery against the selling jobber, or to avail himself of his right to buy in against him,¹ then the principal will be in strictness entitled on any subsequent day to withdraw from the contract, provided the broker has not altered his own position by payment of the purchase-money. And it is submitted that this would be equally the case if the broker had paid away the money, for this he could not be justified in doing before delivery.

¹ Post, p. 57.

To avoid incurring any risk of this nature the broker may, and, where the security is of the non-current class, frequently does, specify on the bought note that the purchase is "for delivery," instead of for a day certain.

A few months after the decision in *Fletcher v. Marshall*, an attempt was made by a principal to repudiate a similar contract, and to demand back his purchase-money from the broker on account of non-delivery of scrip on the day specified in the bought note. The cause of the delay was that the scrip had been called in by the directors of the company in the interval between the purchase and the day fixed for delivery for the purpose of registration and of re-issuing sealed certificates in lieu thereof. This being a circumstance over which neither party had any control, the case was decided in the broker's favour, and the bought note was interpreted to be a contract for delivery of scrip on the day fixed, if not then called in, otherwise of share certificates as soon as they should be issued.¹

Insolvency
of principal.

If the principal should by reason of insolvency, death, or otherwise, become unable to receive and pay for or deliver the securities which he has ordered to be purchased or sold, and if no one is authorized to deal with them on his behalf, the broker may proceed at the earliest practicable moment to close the account and claim for the differences against the estate of the principal. The meaning of the word "insolvency" in this rule is not very clearly defined, and can only mean such inability on the part of the principal to pay his debts in the ordinary course of business as that it becomes manifest

¹ *M'Ewen v. Woods*, 11 Q. B. 13; see *Bowly v. Bell*, 3 Q. B. 284, post, p. 48.

to a jury that the broker could not depend on him for protection against any loss that might occur on the account.¹

Where the principal is known to be in default to any member of the House, other members are forbidden to transact business for him until he has made a satisfactory arrangement with his creditors.

In *Scrimgeour's case*,² a suggestion was thrown out by the Court that if any loss should accrue to the principal in consequence of the closing of the account before the day agreed upon, that is to say, if prices should tend in his favour by the next settling day, this might possibly be ground for a counter-claim by him against the broker. This point was, however, not decided, nor did it even arise in the case. It is submitted that no such counter-claim would be allowed; for, although, in the case of any other broker who, in the exercise of his own discretion, deals before the day fixed by his instructions, such a counter-claim would undoubtedly be good, yet on the Stock Exchange there is this distinction, that the broker is justified by the usage, and it would, therefore, be entirely contrary to the proposition stated above as to the broker being indemnified by his principal if such a counter-claim were admitted, which might render the broker personally liable to any extent for an error in judgment in selling securities which he has bought under the instructions of his principal, and as to the real value of which he may be, and indeed is presumed to be, entirely ignorant.

Closing of
account by
broker.

It follows, on the other hand, that where loss is caused by the fault of the broker, and not by

Where loss
caused by
fault of
broker.

¹ *Lacey v. Hill, Crowley's claim*, L. R., 18 Eq. 182,
Scrimgeour's claim, L. R., 8

Ch. 921.

² *Lacey v. Hill*, L. R., 8 Ch. 921.

reason of his having entered into the contracts which he was authorized to enter into by his principal, there is no such implied promise to indemnify. An illustration of this principle is to be found in the case of *Bowlby v. Bell*,¹ where a broker had been instructed to sell shares which were at the time sent in to the office of the company for the purpose of registration, and which the principal was, in consequence of delay at the office, unable to deliver on the day fixed. It was understood between all the parties to the transaction that the shares were in for registration at the time, so that the contract could only be taken to be for registered shares, for the transfer of which a deed was required by the Act of incorporation of the company. On non-delivery of the shares by the principal, they were bought in against the broker, who paid over the difference to the purchaser, notwithstanding a caution from his principal not to do so. It was held that this was a payment in his own wrong for which the broker could not recover, for he could not have been legally compelled by the purchaser to pay anything, inasmuch as no transfer deed had been tendered to him by the purchaser; this tender being held to be a condition precedent to a right of action against the seller for non-delivery.² Here the sale had taken place on the Hull Stock Exchange, and the case is cited, not as an authority upon the question (which will be dealt with hereafter) of the necessity of the tender of a transfer deed on the part of the purchaser, but merely as an illustration of the principle above stated.

Insolvency
of broker.

Again, in the case of *Duncan v. Hill*,³ a firm of

¹ 3 C. B. 284.

² See *Stephens v. De Medina*,

⁴ Q. B. 422, post, p. 92.

³ L. R., 8 Ex. 242.

brokers had been instructed to buy certain shares, but were directed by their principal to carry them over to the next account day. This was done, a statement of account was furnished, and the difference ultimately paid by the principal. The firm were declared defaulters three days after the carrying over, and all their transactions were peremptorily closed in accordance with the rules of the Stock Exchange, their accounts being made up by the official assignees at the current prices of the day without communication with the principal. Prices in the meanwhile were going against him, so that on the closing of the brokers' accounts a further sum appeared to be due from him, which would have been considerably increased had the transaction not been closed until the following account day. On action brought by the brokers on behalf of their creditors the Court of Exchequer held¹ the principal liable to pay this further sum, on the ground that he had impliedly promised to complete the contract in accordance with the rules of the Stock Exchange, in all its incidents and with all its consequences, among which is the condition of immediate payment on default of the broker. It was considered to be only reasonable that the principal should be identified with the broker and subjected to the same liabilities in the performance of the contract. On appeal, however, the Exchequer Chamber reversed the decision,² and treated the question as one of indemnity, holding the principal not liable to indemnify the firm against a loss, which was practically brought on by their want of means to meet their other primary obligations, and not by reason of their having acted as his agents.

The decision would, in all probability, have been

¹ L. R., 6 Ex. 255.

² L. R., 8 Ex. 242.

the other way had there been evidence to show that the default of the brokers was in any way caused by the action of their principal.¹

Changing
broker on
insolvency.

If a broker is declared a defaulter, and his principal can at once find another broker who is ready and willing to take upon himself the rights and liabilities of the defaulter towards the principal, and to act as his broker and be substituted for the defaulter, then the official assignee of the Stock Exchange will, upon personal application made on the same day as the declaration of default, put the principal and his substituted broker in communication with the jobber with whom the contract was originally made, and the jobber is then bound to keep the account open precisely in the same manner as if the contract had been made originally in its substituted form.

Settlement.

When the account arrives it becomes the duty of the broker to use due diligence to secure the delivery of any securities which he has bought for his principal. He may be made personally responsible to his client for any indulgence granted to the seller,² or for any delay in collecting payment for securities sold.

Inquiry as
to suffi-
ciency of
transferee.

It seems to have been assumed by the Courts of law, in several cases arising out of the sale of shares in unlimited companies, or otherwise carrying liability, that it is the duty of the seller's broker to inquire into the sufficiency of the ultimate buyer, and his ability to indemnify the seller against future calls. This is, however, practically not the case, and probably no broker would undertake a responsibility of this nature which might involve the most troublesome inquiries,—such, for example, as a search for

¹ *Crowley's case*, L. R., 18
Eq. 182.

² *Ante*, p. 45.

the certificate of baptism of the transferee, to discover whether he were an infant.

Nor can the broker be made responsible for the non-registration of the transfer of any shares which he has been instructed to buy. His duty is to pay the purchase-money to the seller on receipt of the documents of title, and all that he can then do is to obtain the signature of his principal, and to send in the instrument of transfer to the office of the company. If it should afterwards turn out that the transfer cannot for any reason be completed by registration, in some cases an action might accrue to the buyer, if he was not in fault himself, to recover back his money; but this action could not be against the broker, who has paid the money over in accordance with the practice of the Stock Exchange.¹

Registration
of
transfer.

The securities when bought are not necessarily identified as the particular stocks or shares ordered to be purchased, but remain the property of and in the disposition of the broker. It is not until the transaction is completed by payment by the principal and delivery of the securities, that the particular stock or shares becomes the specific subject of the bargain, or the property of the principal. This delivery may be symbolical, as by the broker setting aside the securities with the name of the principal attached, in which case the broker holds them at the disposal of the principal; and this would be the duty of the broker in all cases where he has received payment from his principal in advance.

Delivery of
securities to
principal.

After the transaction is completed on the Stock Exchange, and the money, or the securities, as the case may be, are finally in the hands of the broker

After com-
pletion of
transaction.

¹ See *Taylor v. Stray*, 2 v. *Russell*, 1 E. & E. 888, C.B., N.S. 196, per Willes, J., post, p. 85. and ante, p. 33; and *Stray*

to be handed over to his principal, the rules and customs of the Stock Exchange cease to have any effect upon the relation of principal and broker, and the ordinary principles of law apply. Thus in a recent case of *Pearson v. Scott*,¹ it was attempted on the part of a broker to set up a custom that brokers were only bound to recognize the persons actually employing and instructing them to sell or purchase securities, and to obey the directions of those persons only as to the mode of payment and as to the application and disposal of the proceeds of sale, and to treat such persons alone as their principals. It was held by Fry, J., that such a custom could not possibly be upheld as reasonable. The facts in that case were these:—Four executors holding stock in their own names directed their solicitor to sell the stock. The solicitor, in the name of his firm, gave to a broker, whom the solicitor had employed in Stock Exchange speculations on his own account, directions to sell the stock. The stock was sold by the broker, and the transfer deeds forwarded by him to the solicitor, who returned them duly executed, with receipts for the purchase-money indorsed and signed by the four executors. The sale was completed, and the broker sent to the solicitor a cheque for part of the proceeds, and carried the balance on the transaction to the credit of the solicitor in the account between them, which account was afterwards settled by a payment made to the broker. It was held, that, under the circumstances, the broker must be taken to have had notice that the shares were not the property of the solicitor, and that, though the solicitor had from the executors authority to receive the purchase-money, payment to him, by giving him

¹ 9 Ch. D. 198.

credit in an account between them, was not sufficient to discharge the broker, who remained liable to the executors for the balance. Nor could the broker be entitled to assume that the solicitor gave the instructions in the character of equitable owner of the stock, without first having made some inquiry upon that point. In fact, a broker, who knows that he is paying an agent, must pay in such a manner as to facilitate the payment by the agent to his principal, that is to say, he must pay in cash, and not by a settlement of account between himself and the agent. But this rule would hardly apply where the agent is a banker, because, in the ordinary course of banking business, a payment to any customer by such an agent would be made by carrying the amount to the credit of his account, and this cannot be said to be facilitated by payment in cash by the broker.

We have hitherto treated the relationship existing between principal and broker from a legal point of view. But a person, though not a member of the Stock Exchange, may, if he so desires, refer to the Committee any complaint against a member; and if it is one which is fitting for their adjudication, it will be decided summarily by them in the same manner as if both parties were members, and in accordance, therefore, with the principles described in the following chapter. On referring a complaint to the Committee, a non-member will be required to sign the following form:—

Reference
of com-
plaint to
Committee.

To the Committee for General Purposes of the Stock
Exchange, London;

In the Matter of a Complaint between and .
Gentlemen,

I do hereby consent to refer this matter to you, and
I undertake to be bound by the said reference, and to abide by

and forthwith to carry into effect your award, resolution or decision in this matter, in the same manner as if I were a member of the Stock Exchange; and I further undertake not to institute, prosecute, or cause, or procure to be instituted, or prosecuted, or take any part in proceedings, either civil or criminal, in respect of the case submitted. And I consent that the Committee may proceed in accordance with their ordinary rules of procedure, and I undertake to be bound by the same. Also that the Committee may proceed *ex parte* after notice, and that it shall be no objection that the members of the Committee present vary during the inquiry, or that any of them may not have heard the whole of the evidence, and any award or resolution of the Committee, signed by the chairman for the time being, shall be conclusive that the same was duly made or passed, and that the reference was conducted in accordance with the practice of the Committee. And I hereby consent that such award or resolution shall be deemed to be an award under the Common Law Procedure Act, 1854, and be enforceable accordingly, and that the same may be made a rule of the Queen's Bench, or of either of the other common law divisions of the High Court of Justice.

(Signed) ——— .

CHAPTER III.

BROKER AND JOBBER.

THE next step in the transaction is the contract between the broker and the jobber. The Stock Exchange does not recognize in its dealings any parties other than its own members; therefore, whatever be the instructions given to the broker by his principal, this bargain made with the jobber must be fulfilled according to the rules, regulations and usages of the Stock Exchange; if any special arrangement has been made between the broker and his client, or any additional liability incurred by the broker, the responsibility rests with him, since he cannot call upon the jobber to deal otherwise than according to those rules. Nor would the question arise between broker and jobber as to whether any rule or usage was reasonable or not; for these usages are founded on the general convenience of all persons engaged in business on the Stock Exchange, and could not, therefore, as regards those persons, be said to be unreasonable.¹

Contract between broker and jobber.

Moreover it is a rule of the Exchange that no member may attempt to enforce by law any claim arising out of Stock Exchange transactions, against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the creditors of the defaulter, or of the Committee. A member can of course have resort to the law if he chooses, in defiance of this rule; but

Legal proceedings by members.

¹ *Grissell v. Bristowe*, L. R., 4 C. P. 36.

as this would render him liable to expulsion from the House, it very rarely, if ever, happens; nor is it likely that the Committee would consent to refer to the decision of the Courts any dispute arising out of transactions with which they are themselves so peculiarly competent to deal. We must, therefore, in considering the relationship which arises between broker and jobber be guided solely by the rules and regulations adopted by the Committee for General Purposes of the Stock Exchange.

Settlement
of disputes.

The parties are of course bound from the moment the contract is made,¹ and, as we have seen, the bargain is checked on the following day. Any disagreement would then be discovered, and would, if necessary, have to be referred to arbitration; if arbitrators cannot be found, or are unable to agree, the matter would then be finally referred to the Committee for their decision. The Committee do not entertain any application which has for its object to annul any bargain in the Stock Exchange, unless upon a specific allegation of fraud or wilful misrepresentation. There are also certain dealings which they refuse to recognize, such as dealings in letters of allotment, either of loans or shares in new companies; dealings in new securities to which the Committee have refused a settlement; or dealings effected for a period more than a month in advance. This would apply, in ordinary securities, to all bargains made for a period beyond the ensuing two accounts; and, in English and India stocks, to all dealings for a future account effected more than eight days previously to the account then pending. It must not be assumed, however, that a member, relying upon this fact, can repudiate any such bar-

Dealings for
future ac-
count.

¹ See ante, p. 7.

gain with impunity, for it is within the discretion of the Committee to take into consideration at the next annual re-election any dishonourable conduct on the part of members.

Dealings in prospective dividends on shares or stock of railway or other companies are prohibited by the rules, and are, *à fortiori*, not recognized by the Committee; although, if contracts of this nature should be made, there is nothing in the Gaming Act before alluded to, or in the principles of common law, to render them voidable.¹

Dealings in prospective dividends.

All contracts on the Stock Exchange are made subject to an implied reservation of the right of rescission, if the contractee fails to complete; that is to say, the party who is ready and willing to complete may in such cases treat the original contract as rescinded, effect elsewhere a similar bargain at the market price, and claim against his original contractee for any loss incurred. This is in accordance with the ordinary rule of law, so far at least as it relates to the remedy of the buyer; but on the Stock Exchange there are certain regulations as to the period at which a member may be treated as having failed to complete his bargain, and as to the method of ascertaining and claiming the amount of loss incurred, which must be strictly followed where it is sought to enforce the remedy.

Remedies for delay.

If loss has been incurred, it will be in every case the difference between the contract price and the market value of the security at the time the contract was broken. This is ascertained, in a practical way, by notifying the non-completion of the contract to the secretary or the clerk of the House in the proper

"Buying in" and "selling out."

¹ *Marten v. Gibbon*, 33 L. T., N. S. 561. Since this case was decided the wording

of the Stock Exchange rule has been altered; in the report the old rule is set out.

market, and giving him instructions to "buy in" or "sell out" the securities, as the case may be. The buying in or selling out is effected publicly in the House, and is in fact the same as a dealing by auction. The result is that the original contracting party who is not in default is placed in the same position as if the contract had been duly completed, inasmuch as the substituted contractee is bound to complete immediately; that is to say, in the case of a buying in, the new seller is bound to deliver before one o'clock on the following day,¹ otherwise the security may be repurchased without further notice, and the loss claimed from him; while, in the case of a selling out, payment must be made at once on receipt of the securities, or, if a ticket is to be passed, this must be done within half-an-hour, otherwise the transfer may be made into the buyer's own name, and the money claimed from him.

Public
notice of
buying in.

Where instructions have been given to buy in, an hour's notice of the intended purchase must be posted in the Stock Exchange; but still it may sometimes happen, where the security is one which is not much dealt in, that no member is in a position to deliver on such short notice, and any attempt to buy in would then prove abortive. But where this is possible, the desired result is obtained and the amount of damages ascertained in a simple and effective manner.

When securities out of
control of
seller.

While there is any sufficient reason to excuse non-delivery of securities, such as that they are known to be out of the control of the seller for the payment of calls, or the receipt of interest, dividends, or bonus, it is not allowed to buy them in, but the Committee on being applied to will fix a day on which they may be bought in.

¹ On Saturdays, 12 o'clock.

The damages would then be *primâ facie* payable by the member with whom the contract was originally made, and he would have a remedy over if he were not the person really responsible; but, to avoid all circuitry, the officials of the House trace the transaction to the responsible party, and claim from him the amount of the difference.

Transaction to be traced to responsible party.

It remains to describe the periods at which, under different circumstances, these remedies may be enforced.

On ticket days, as we have seen,¹ it is the duty of a buyer of registered securities, if he intends to take them up, to issue a ticket before twelve o'clock, and it is the duty of all the intermediate parties to pass the ticket without delay. If the deliverer of the securities does not receive a ticket by half-past two o'clock,² he is entitled to assume that somebody is in default, and he may sell out his securities up to three o'clock on that or any subsequent day.³ Then if it turns out that the ticket was not regularly issued before twelve o'clock, the issuer will be made responsible for any loss occasioned by the selling out. Should, however, the ticket have been regularly put into circulation, the holder of it at two o'clock would be the person responsible for any selling out on the ticket day; but it hardly ever happens that the selling out is enforced on the same day. If the selling out takes place on any subsequent day, the holder of the ticket at three o'clock⁴ on the previous day is liable, unless he can prove undue delay on the part of his immediate buyer in passing the ticket.

Selling out on non-receipt of ticket.

To facilitate the tracing of the transaction to the

Endorsement of

¹ Ante, p. 16.

² In the case of English and India stocks, &c., this is half-past one on the day for

delivery..

³ Post, p. 68.

⁴ On Saturdays, one o'clock.

time of
passing
ticket.

responsible party, it is a rule of the Stock Exchange that any member who receives a ticket for registered securities from the issuer after twelve o'clock on ticket day, must note the time on the back of the ticket; and it is also required that the member who first receives any ticket after one o'clock must draw a line to note the fact. Similarly, at each half-hour up to three o'clock, and after that hour, the exact time must be marked at which the ticket is received. Members omitting to note the times thus fixed, may become liable for losses occasioned by selling out in case undue delay is proved. And, again, a member who accepts delivery of securities to bearer after time, and passes them on without taking the numbers, thereby increasing the difficulty of tracing the transaction, may be required himself to trace out the member responsible for the loss.

Delivery of
securities
after time.

Antedated
tickets.

Since this liability depends to such a great extent upon the date of the tickets passed, of course no member can be obliged to accept an antedated ticket. If, however, a ticket is tendered to him as such, and he does not refuse it, he takes it with all its liabilities; but if it is passed as an ordinary ticket, the liabilities remain with the member who put the ticket again into circulation. If a ticket is undated, a member holding it is not liable for any loss arising from the security having been bought in, unless such ticket has been seven days in his possession. But if any member makes any alteration in a ticket, or detains it improperly, he is liable for any loss occasioned.

Undated
tickets.

Right of
seller to dif-
ference be-
tween ticket
price and
making-up
price.

Should a seller not be satisfied with the name of the issuer of a ticket passed to him at a price below the price of his sale, he is entitled to protect himself by demanding immediate payment of the difference between the price marked on the ticket, and the

making-up price of the day; but if the making-up price is above the price of sale, he is only entitled to claim the difference up to the price of sale. If, however, the price on the ticket is lower than any quotation in the official list during the account, the seller is entitled to refuse it altogether, unless the bargain represented by such ticket was made within the two preceding accounts.

If a member splits a ticket, he must keep the original one, or he may be required himself to trace it in case of selling out. He must copy on the split tickets the name of the issuer of the original ticket, and must also write on them his own name as being the person responsible for the splitting. . The buyer will, in consequence of the splitting, be compelled to pay more than one registration fee, and if the amount of the security purchased is split into odd sums, he will also have to pay larger stamp duty; but it is a rule of the Stock Exchange that a seller cannot be called upon to prepare a transfer for an amount of shares or stock requiring a higher stamp than 9*l.* 15*s.* Any member therefore issuing a ticket for such an amount should specify on the ticket the amounts in which he desires to have the stock transferred, that is to say, the way in which he may wish to have it divided so as to involve the least possible cost of stamps, having regard to this rule. The expense of any further stamp duty required on the transfers in consequence of a splitting otherwise than as indicated on the ticket, may be claimed by the buyer from the member who split the ticket, as also the expense of registering any further transfers than are shewn by the specification on the ticket. No particular time is fixed by the rules for sending in these small claims, but they are usually settled within a few weeks.

Split tickets.

Buying in
on default
of delivery.

Then, on the settling day, the buyer of securities to bearer is entitled to have them delivered to him by half-past two o'clock, and if this is not done he may buy in on the following¹ or any subsequent day after one hour's notice posted in the foreign market announcing the intended purchase. Registered securities, as we have seen, are not required to be delivered until the expiration of ten days from the ticket day. On the expiration of that time the buyer becomes entitled to delivery, or otherwise he may buy in against the seller at or after twelve o'clock on the eleventh, or on any subsequent day.² Here also an hour's notice must be posted in the Stock Exchange, and the purchase must be made or attempted within half-an-hour after the expiration of the time fixed. The name into which the stock or shares are to be transferred must be stated in the order to buy in. The loss occasioned by such buying-in must be borne by the ultimate seller, unless he can prove that there has been undue delay in the passing of the ticket on the part of any member, who is in that case liable.

English and
India
stocks.

English and India stocks, &c., which have been bought for a specified day and not then delivered, may be bought in on the following day at eleven o'clock, and the member causing the default is liable for the loss incurred, and is also liable to a fine of $\frac{1}{4}$ th per cent. for the non-delivery of the stock, independently of its being bought in. This rule is still in force, but the necessity for any buying in of these

¹ If the securities have been bought for any day except the settling day, and not delivered by half-past two on that day (or half-past twelve on Saturdays), they may be

bought in on the same day.

² Where the ticket has been issued and passed on the making-up day, the time only begins to run from the ticket day.

stocks is extremely rare, and the attendant fine is never imposed.

As to what constitutes a valid delivery,¹ it is a rule that every bond or scrip share is considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated. The Committee will not take cognizance of any complaint in respect of bonds or shares alleged to have been delivered in a damaged condition, or deficient in or with irregular coupons, should they be detained by the buyer more than eight days after the delivery, unless it can be proved that the member passing them was aware of their being imperfect.

Delivery.

Torn or damaged bonds.

Irregular coupons.

And all bargains must be settled in securities which have not been officially notified as drawn. In case of the erroneous delivery of any drawn securities, the buyer (on receipt of undrawn securities, and on allowance being made for any drawing or dividend of which he may have lost the benefit) must deliver such securities back to the person who held them at the time of the official notification of the drawing, or must pay to him any proceeds received from such drawing, provided the securities or the proceeds thereof be traced to, and remain in the possession, and under the control, of such buyer, all intermediate members being released from liability.

Drawn bonds.

No claim in respect of the erroneous delivery of drawn securities will be entertained by the Committee unless made within nine calendar months.

The securities delivered must also bear the proper

Stamps on securities to bearer.

¹ No member can be required to accept the delivery of a certificate of American shares of a larger amount than 10 shares of \$100 each

nominal capital, or 20 shares of \$50 each, nor an American bond of a larger amount than \$1,000, except upon special contract.

ad valorem stamp,¹ which is imposed by the Act on all mortgages, bonds, and debentures, and on all foreign securities issued subsequently to the 3rd June, 1862, except those on which the dividends are payable abroad. Any person transferring such a foreign security not duly stamped is liable to a penalty of 20l.² The same penalty is imposed on the issuing or delivering of any letter of allotment, or scrip certificate which does not bear a penny stamp.³ Share warrants to bearer, issued under the Companies Act of 1867, must bear three times the amount of ad valorem stamp duty which would be chargeable on a deed transferring the shares specified in the warrant, if the consideration for the transfer were the nominal value of the shares;⁴ and in default, a penalty of 50l. is imposed on the principal officer of the company issuing the warrant. Stock certificates issued under the National Debt Act of 1870 are exempt from stamp duty.

Coupons or certificates with transfer deed.

Again, the buyer of registered securities may refuse to pay for a transfer deed unaccompanied by coupons or certificates,⁵ unless it be officially certified thereon that the coupons or certificates are at the office of the company. But if the transfer deed be perfect in all other respects, the shares or stock must not be bought in until reasonable time has been allowed to the

	£	s.	d.
¹ The amount is as follows:—On any security for the payment of money not exceeding £25	0	0	8
Exceeding £25 and not exceeding 50	0	1	3
„ 50 „ „ 100	0	2	6
„ 100 „ „ 150	0	3	9
„ 150 „ „ 200	0	5	0
„ 200 „ „ 250	0	6	3
„ 250 „ „ 300	0	7	6
„ 300 for every £100, and also for any fractional part of £100, of such amount	0	2	6

² 33 & 34 Vict. c. 97, s. 114. is given on page 94.

³ Ib. s. 101.

⁵ See *Hunt v. Gunn*, 13 C.

⁴ The amount of this duty B., N. S. 226.

seller to obtain the verification required. If the seller have a larger coupon than the amount of stock conveyed, or only one coupon representing stock conveyed by two or more transfer deeds, the coupon may be deposited with the secretary of the Share and Loan Department of the Stock Exchange, who will forward it to the office of the company, and certify to that effect on the transfer deeds, which then become a valid delivery.

Division of coupons.

If new securities have been issued in right of those in which the dealing has taken place, the buyer is entitled to the new ones, provided that he specially claims them in writing from the seller within a reasonable time.¹ In the case of registered securities, claims are required to be settled by letters of renunciation,² when practicable; but if not practicable, and there be sufficient time for registration, the seller may, after due notice, require the buyer to complete the bargain in old shares or stock. The seller of securities to bearer may also after due notice require the buyer to complete the bargain in old securities. These claims should be entered as bargains, and as such be checked in the usual manner.

New securities in right of old.

Letters of renunciation.

Claims.

If the new shares or stock cannot be obtained by letters of renunciation, or by the transfer of the old, the Committee will fix a price at which the same must be temporarily settled, and this amount may be deducted by the buyer from the purchase-money of the old securities, until the special settlement.

Fixing prices for new shares.

The Committee will not entertain any dispute relating to unchecked claims of this nature unless brought before them within ten days after the special settling day.

¹ See *Stewart v. Lupton*, 22 W. R. 855.

² These must bear a penny stamp like letters of allotment.

Right of
buyer to
dividends.

Bargains in securities to bearer must be settled with the current coupon, unless it happens to be payable on or before settling day, and with overdue coupons, if any, attached. Default in this respect is no ground for treating the delivery as invalid, or the bond as imperfect, but the buyer would have a right to demand the coupon, or its market value, which, in case of dispute, is fixed by the secretary to the Share and Loan Department. The secretary also fixes a sterling price for all coupons which are payable only abroad, and at this price they must be accounted for. Similarly the seller of registered securities is responsible for any dividends which he may receive pending registration of transfers, which must be accounted for at the nett amount receivable after deduction of income tax. It is, however, always agreed at the time of sale whether the price paid is to include an approaching dividend. The practice is to begin to quote bargains in securities to bearer "ex dividend" on the day on which the dividend is payable, and to quote bargains in transferable shares or stock "ex interest" from the beginning of the account in which the interest may become payable, and "ex dividend" from the beginning of the account following that in which the dividend may have been declared, provided the dividend be made payable to the holders then registered; but in case of a subsequent closing of a company's books for payment of the dividend, then, from the beginning of the account following that in which such closing of the books occurs. Shares in foreign railways are quoted, when practicable, "ex dividend" or "ex interest" at a period in accordance with the practice of foreign bourses.

Quotations
ex dividend
or ex in-
terest.

Railway de-
bentures.

Debentures, and bonds of railways in Great Britain, Ireland, and the East Indies, are dealt in so that the

accrued interest, up to the day for which the bargain was done, is paid by the buyer; but bargains in bonds and debentures of colonial and foreign railways include the accrued interest in the price.

In the case of an approaching drawing, although the price paid by the buyer may be intended to include the drawing, yet he has no claim against the seller if it should happen to take place before the day for which the securities were bought; that is to say, he would not be entitled to claim delivery before that day. If, however, the bargain has been specially made "cum drawing," and, owing to any undue delay in delivery of the securities, or for any other reason, the drawing takes place before their numbers can be made known to the buyer, so that the benefit of the drawing is lost to him, he would fairly be entitled to the calculated value of the drawing as compensation.

When buyer
entitled to
drawing.

The selling broker then usually completes the bargain by delivery of the securities to the ultimate buyer, but he has a right, on receiving a ticket, to elect whether he will demand payment from his immediate buyer or from the original issuer of the ticket. If he applies to the latter and fails to obtain payment, or if he receives a cheque which is dishonoured, the former may be called upon for immediate payment. If he elects to settle in the first instance with his immediate buyer any bargain in securities to bearer, it will become necessary to deliver the securities before half-past twelve instead of half-past one o'clock. A buying broker who is desirous of taking delivery of such securities from his immediate seller would usually issue no ticket; but if, in order to obtain earlier delivery, he do issue a ticket, he must give notice before twelve o'clock on ticket day to his immediate seller of his intention to settle with him, and cannot then be called upon to

By whom
payment to
be made.

To whom
payment to
be made.

pay after two o'clock on settling day. Should he neglect to give such notice, he may be called upon to pay up to half-past two.

**Selling out
on default
of payment.**

The purchase-money is received by the seller, on delivery of the securities, from the member to whom they are delivered; that is to say, either the ultimate buyer or the immediate buyer, according to whether a ticket has or has not been passed. This may take place on the settling day, or any subsequent day, but immediate payment can be demanded only if the securities are delivered before half-past two;¹ and on settling days securities to bearer for which a ticket has been passed must be delivered one hour earlier in order to entitle the deliverer to demand payment; but registered securities must always be paid for till half-past two.¹ If the buyer is not prepared to pay at the hour thus fixed, the deliverer may at once sell out, but this is rarely done until the following day.

**Payment
for portions.**

If the ticket has been split, the security will be delivered in portions, and the buyer must pay for each portion of registered shares or stock presented, provided the number be not less than ten shares, or the value less than 200*l*. Tickets for securities to bearer cannot be split; but the security may be delivered in portions, the ticket being presented to the issuer for alteration, so that it may show the amount still remaining to be delivered, and any such portions must be paid for on delivery, if required.

**Stamps and
fees.**

The amount of purchase-money will include the ad valorem stamp duty,² and registration fee, which are payable by the buyer. In cases of loans, the borrower pays the nominal consideration stamp of

¹ On Saturdays, one o'clock.

² The amount of stamps required will be found on p. 94.

ten shillings, the registration fee, and the mortgage stamp.

If a call has been made upon the shares sold, the deliverer will remain legally liable to the company until the transfer is registered; he is, however, by the rules of the Stock Exchange, entitled to protect himself by paying the amount, although not yet due, and claiming it, together with the purchase-money, from the issuer of the ticket, on delivery of the security.

Payment of
calls not yet
due.

With regard to the personal liability of the broker for payment of the purchase-money, it seems to have been formerly a mere understanding between members of the Stock Exchange that they did not recognize in their dealings any other parties than their own members, so that in considering the question whether credit was given by the jobber in any individual case to the broker or to his principal, a jury would have been allowed to hear evidence to rebut the presumption that the broker was primarily liable;¹ but now, independently of the fact that such a question would not be allowed to come before a jury, there is a distinct rule that brokers are to be treated on the Stock Exchange as principals, and that no member can be obliged to take a reference for payment to a non-member, or to pay a non-member for securities bought in the Stock Exchange.

Brokers
treated as
principals.

The ultimate payment of the purchase-money is accordingly by the cheque of the buying broker, which must be passed through the clearing-house, unless he consents to its being otherwise presented. If a member require bank notes in payment for securities sold, he must either stipulate to that effect at the time of making the bargain, or else he

Cheque.

Bank notes.

¹ *Mortimer v. M'Callan*, 6 M. & W. 58.

must give notice before half-past eleven on the day of delivery, and he is then entitled to cash upon delivery of the securities or the bank receipt.¹

Genuineness
of securities.

The deliverer of securities to bearer is responsible for their genuineness, and, in case of his death, failure, or retirement from the Stock Exchange, this responsibility attaches to each member in succession through whose hands the ticket for the securities may have passed.² And the deliverer of registered securities is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received until reasonable time has been allowed to the transferee to execute and duly lodge the documents for verification and registration. When an official certificate of registration of such shares or stock has been issued, the Committee will not, unless bad faith is alleged against the seller, take cognizance of any dispute as to title, until the legal issue has been decided, for this issue may involve intricate questions as to the liability of other parties; the company would, for example, on registering a forged transfer, become *primâ facie* liable to the purchaser, and also to the owner of the shares transferred; the latter liability depending again upon whether the forgery was rendered possible by the negligence or misconduct of the real owner. As between members of the Stock Exchange, there is a rule that all reasonable expenses of the legal proceedings have to be borne by the selling member.

Waiver of
right to buy
in or sell
out.

The right to buy in or sell out securities will be considered to be waived if not exercised within a certain time. Thus the buyer of securities to bearer

¹ See *Mocatta v. Bell*, 27 L. J., Ch. 237.

² See *Royal Exchange Assurance Co. v. Moore*, 2 New R., Q. B. 63.

who allows two clear days to elapse without availing himself of his right to buy in, or without attempting to buy in, is taken to release his seller from any loss in consequence of the public declaration of any member as a defaulter, unless he has waived his right at the request or by the consent of his seller.

Again, the issuer of a ticket for registered securities who allows thirteen clear days to elapse without enforcing this right is also taken to release his seller from all liability in respect of the non-delivery of the securities unless the waiver has been at the request or with the consent of his seller. In this case the holder of the ticket alone remains responsible to the issuer for the delivery of the securities.

So if the deliverer of registered securities allows two clear days to elapse without availing himself of his right to sell out after default has been made in passing a ticket, his buyer is released from all loss, except in cases where the ticket has not been passed in consequence of the public declaration of any member as a defaulter. If a seller of such securities does not deliver within thirteen clear days, the intermediate buyer from whom he received the ticket is released, and the issuer of the ticket alone remains responsible for the payment of the purchase-money.

CHAPTER IV.

PRINCIPAL AND JOBBER.

Intervention
of Com-
mittee.

It is now proposed to inquire into the relationship created between the principal and the jobber with whom the broker has dealt. Here again, as in the case considered in the preceding chapter, the rules of the Stock Exchange forbid the jobber to enforce any claim by law against the principal unless with the consent of the Committee, or, as the rule seems to mean, unless with the consent of the intermediate broker.¹ This is, of course, a mere honorary regulation, and could not be relied on by the principal as a defence if an action were brought against him by the jobber. The utmost effect of such a rule would be that the jobber might render himself liable to expulsion from the House for contravention of it.

The rule goes on to add, in somewhat ambiguous language, that the Committee will intervene in cases where the principal shall proceed at law against a member, but it is not easy to see what the prac-

¹ The rule is as follows:—
“No member shall attempt to enforce by law a claim arising out of Stock Exchange transactions against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the creditors of the defaulter, or of the Committee.

“The Committee have power to intervene in cases where the principal of a member shall attempt to enforce by law a claim which is not in accordance with the rules, regulations, and usages of the Stock Exchange, and will deal with such cases as the circumstances may require.”

of the latter part of this rule is intended would seem to give the Committee power to the defendant to resist a just claim; and to assist him in defending an unjust one, if the validity of any of the rules of the House were questioned. If an action is brought by a principal against the jobber, the Committee would have no locus standi to intervene in a legal sense, but possibly they might consider it of their duty to compel the broker who had failed in the matter to reimburse the jobber any damages which the law might, according to their opinion, have unfairly awarded to the principal. It has happened in a case where a principal had failed to recover in an action against a jobber certain moneys paid by his broker according to the rules of the House but contrary to the directions of the principal, and where therefore the jobber had in the usual course of law been reimbursed by the unsuccessful plaintiff his costs, but as between party and party only, that the Committee ordered the broker to pay to the jobber certain extra costs incurred, as between attorney and client, which had not been allowed on taxation of the costs in the action.

Still, whatever be the powers which the Committee may have in this respect, there is no doubt that the rules of the Stock Exchange cannot protect its members from actions brought against them. "The Stock Exchange is not an Alsatia; the Queen's law runs through it, and the Queen's writ runs into its recesses and precincts of Capel Court."¹

Legal rights
of principal
not affected.

On the completion of the bargain between broker and jobber in the manner supposed in the preceding chapters, there is a good and valid

James, L. J., in *Ex parte Saffery*, 4 Ch. D. 561.

contract between the principal and the jobber which can be enforced at law, but which will be of course interpreted with reference to the customs of the Stock Exchange. Or, if the principal is the party aggrieved, he has the option of referring his complaint to the Committee in the manner described at the end of Chapter II.

Effect of
sale to
jobber.

Considering then, first, the case of registered securities, let us suppose a sale has been effected by the broker, on behalf of his principal, to a jobber in the manner described in the previous chapters. It seems to have been a matter of doubt whether, in cases outside the Stock Exchange, the vendor of shares can require the purchaser to accept and register a transfer in his own name,¹ or whether the purchaser would have a right to call upon the vendor to execute a transfer to a nominee of the purchaser on the analogy of a sale of real estate,—where the vendor could not object to execute a conveyance on the ground that it was not a conveyance direct to the person with whom he had made the contract; or of a sale of goods,—where the vendor could not refuse to deliver them to the order of the purchaser, and insist on delivering them to the purchaser himself. The latter view was that taken by Lord Blackburn in *Maxted v. Paine*,² where he said that the right of the seller is to require his contractee to procure the transfer to be executed by his nominee, and to be registered after execution so as to relieve him from all future liability, and that he has a right to hold his contractor personally liable if this is not done, but not to dictate to him whether he shall do this by taking the shares in the nominee's name or his own.

¹ Per Lord Cairns, C., in *Ch. 10.*
Coles v. Bristowe, L. R., 4 ² L. R., 6 Ex. 151.

This view is supported by the current of authority, and is certainly the only one applicable to dealings on the Stock Exchange, where the intervention of a jobber is, in the large majority of cases, a necessity. Upon conclusion of the bargain, the securities sold become at once in equity the property of the jobber, and they are taken to be held by the principal as trustee for him. There is then, nothing to prevent his selling that which is so held in trust for him, just as if it had been vested in him by a legal transfer, provided the rights of the original seller are not interfered with. This resale is naturally the object the jobber has in view, and is presumed to be contemplated by the selling principal, being in accordance with the custom of the Exchange. Accordingly, the contract, which the purchasing jobber will be considered to have made with the selling principal, is equivalent to an undertaking that he will, at the time fixed, either himself take and pay for the securities, or else that he will furnish the seller with the name of another person who will agree to accept a transfer of and pay for them;¹ and, in the meanwhile, that he will indemnify the seller against all the consequences of his remaining on the register as legal owner of them.

Implied
contract by
jobber.

If, then, the jobber takes the securities, he will be himself the ultimate transferee, whose position is discussed in the following chapter. If he do not himself take them, he can only fulfil this contract by furnishing the name of a person who is competent and willing to accept the transfer, that is to say, the contract is not fulfilled if the name be that of a non-

Passing
improper
name.

¹ *Nickalls v. Merry*, L. R., 7 H. L. 530. The same contract is implied where the jobber is merely taking in the

securities for the real buyer; *Allen v. Graves*, L. R., 5 Q. B. 478.

existent person, a lunatic, an infant, a married woman, or a person who has not given authority for the use of his name.¹ The whole object of the seller being to obtain a real purchaser of the shares, it would be in the highest degree irrational to suppose that this contract could be fulfilled except either by accepting and paying for the shares, or by providing some one who could validly contract to do so.

Where, therefore, the name of an incompetent person has been passed, and the contract of the jobber remains consequently unfulfilled, the seller will at any time be entitled to a legal remedy, and it seems also that the Committee of the Stock Exchange will give relief to the selling broker under such circumstances, even though years may have elapsed before the matter is discovered and laid before them.² The buying jobber in such cases would, of course, have his remedy over, so that ultimately the loss would be made good by the buying broker, or whoever else is responsible for the issuing of the name.³

Extent of
implied pro-
mise by
jobber.

But there is no implied promise on the part of the jobber that the buyer, though competent to contract, is also a responsible person,⁴ which may be a matter of the greatest importance to the seller if there is any prospect of future liability to calls on the shares.

Objection to
name of
transferee.

We have seen,⁵ that until the expiration of ten days after the account day, the purchaser is not entitled, in case of non-delivery, to buy in securities of this nature against the seller, the seller not being

¹ *Maxted v. Paine* (1), L. R., 4 Ex. 81; *Maxted v. Morris*, 21 L. T., N. S. 635; and see *Nickalls v. Eaton*, 23 L. T., N. S. 689, and *Dent v. Nickalls*, 29 L. T., N. S. 536.

² *Capper's case*, cited in

Nickalls v. Merry, L. R., 7 H. L. 545.

³ *Peppercorne v. Clench*, 26 L. T., N. S. 656.

⁴ *Maxted v. Paine* (2), L. R., 6 Ex. 132.

⁵ *Ante*, p. 62.

bound until that time to deliver a transfer. During this time, therefore, the seller has an opportunity to inquire into the responsibility of the buyer. If he has any objection on this score to the person named as buyer, the objection is passed back till it arrives at the hand of the person who originally issued the ticket, and if any dispute arises, the Committee decide as to the validity of the objection, and may require another name to be given in case they think it right to do so.

An objection may, for instance, be raised to the name of a foreigner resident abroad and having no property in this country; this has been considered both by the courts of law,¹ and by the Committee of the Stock Exchange,² to be a reasonable ground for refusing to execute a transfer.

Where transferee a foreigner.

The selling broker may elect³ whether he will demand payment from his immediate buyer, or, as is the usual course where a ticket has been passed, from the broker of the ultimate transferee who is named on it as the member to be looked to for payment. In the latter case, as soon as the transfer deed is accepted, and the price paid, or settled in account, there is a novation which discharges the intermediate members from all further liability.⁴ But if the price is not paid, or if the seller receive a cheque which is dishonoured, the member from whom he received the ticket may be compelled to make immediate payment; the execution of the transfer alone being not sufficient to preclude the seller from looking to his immediate buyer for the completion of the contract.

Novation.

And if the inquiry into the responsibility of the

Discharge of jobber.

¹ *Allen v. Graves*, L. R., 5 Q. B. 478.

³ *Ante*, p. 67.

² *Goldschmidt v. Jones*, 22 L. T., N. S. 220.

⁴ *Mazted v. Paine* (2), L. R., 6 Ex. 169.

transferee is waived, or an indemnity taken, as is sometimes the case, or if the time for objecting is allowed to elapse, then, on the expiration of thirteen clear days from the name day, the jobber who has passed the name of a competent person as the buyer, is, by the custom of the Stock Exchange, completely discharged from all further liability. In *Maxted v. Paine*,¹ this rule was held to apply even where the name passed was that of a man of straw and not the real purchaser, provided the jobber himself be exempt from fraud. But in that case two of the judges² differing from the rest, were of opinion that the jobber ought to have been made liable for the consequences of passing the name of a person who was not *bonâ fide* the ultimate purchaser.

Guarantee
of registra-
tion.

Apart from this custom, the legal liability of the jobber who has purchased the shares would extend further to the procuring of the registration in the name of the transferee; or he would be liable to indemnify the vendor against the consequences of non-registration; or perhaps be liable to a decree for specific performance of the contract, and be compelled to get the shares registered in his own name.³ In the absence of such custom it could certainly be said that the very essence of a contract for the sale and purchase of shares is that the seller shall divest himself of and be relieved from, and that the purchaser shall assume, all future benefits and liabilities in respect of them, and that this could only be effected, at law, by means of a transfer properly executed by both parties and registered. On this principle it was held in the two celebrated cases of

¹ Second action, L. R., 4 Ex. 203; *Ib.* 6 Ex. 132.

² Cleasby, B., and Lush, J.

³ *Paine v. Hutchinson*, L. R., 3 Ch. 388.

Grissell v. Bristowe,¹ and *Coles v. Bristowe*,² that, even in the case of contracts made in the Stock Exchange, evidence could not be admitted of a custom to discharge the purchasing jobber from the obligation to procure registration, for such evidence would be entirely to defeat the contract and the intention of the parties.

These decisions were however reversed on appeal,³ and although the above principle was recognized as applicable to ordinary cases occurring outside the Stock Exchange, yet it was held that contracts made in the House are so far governed by the customs of the House as that the jobber is discharged who has duly furnished a name of a person able and willing to contract to take the shares and pay for them, without being required also to guarantee the registration.

The intervention of jobbers in these transactions was stated to be obviously for the advantage of both sellers and buyers, who are thus brought readily into contact. And there is no hardship on the seller in the substitution of another buyer in the place of the jobber. All that the seller desires is, to find a customer who will pay the price, accept the shares, and relieve him from all further liability in respect of them. If a buyer is found as to whose responsibility the seller is satisfied, he has all that he has sought for. In practice, no seller employing a broker to sell securities for him ever thinks of stipulating that the immediate buyer shall register in his own name. He is satisfied with the buyer whom the broker finds for him, and for the obvious

¹ L. R., 3 C. P. 112.

² L. R., 6 Eq. 149.

³ *Grissell v. Bristowe*, L. R.,

⁴ C. P. 36; *Coles v. Bristowe*, L. R., 4 Ch. 3.

reason that he has it in his own power, by reasonable diligence on the part of himself or his broker, to protect himself against loss. On the other hand, it would certainly be a considerable hardship on the jobber, if, for the small profit realized on the resale of securities, he were to be held responsible for the non-fulfilment of any part of the contract when the matter had passed out of his hands by the seller assenting to complete the transaction with the substituted buyer.

Of course a special bargain may be made, at a sacrifice of price by the seller, so as to extend the liability of the jobber to a guarantee of registration; and in such a case the jobber would render himself liable to indemnify the seller against all future liability consequent on non-registration.¹

Effect of
purchase
from jobber.

In the converse case, where the principal is the buyer of shares, the contract which the selling jobber will be considered to have made with him is, that he will, on the day fixed, find some one who will agree to make a valid delivery of them according to the requirements² of the Stock Exchange. In this case, if the jobber is not himself the owner and transferor of the shares, he cannot be treated as a trustee for the purchaser; but the rights of the parties are practically the same, inasmuch as, if a dividend be declared before delivery of the shares, the purchaser is entitled to it, or if a call be made subsequently to the contract, he is liable to pay the amount and indemnify the jobber. The liability against which the selling jobber is thus indemnified will be that incurred by him in respect of the call towards his seller, if he has already found one;

¹ *Cruise v. Paine*, L. R., 4 Ch. 441.

² *Ante*, p. 63.

otherwise it will be the liability to pay a purchase price enhanced by the value of the call. And when a real seller has been found, and a transfer executed, the buying principal remains liable to indemnify the selling jobber against the consequences of non-registration, or to have a decree for specific performance made against him to compel him to register.¹

But here, again, we find that the custom of the Stock Exchange operates to discharge the seller, whether jobber or principal, who has caused transfers and share certificates to be handed to the purchaser or his broker, and that the seller is not under any further liability to procure the consent of the directors of the company to the transfer, or to guarantee that the ultimate vendor will do so.²

Discharge of
jobber.

Apart from this custom, it has been held that the legal liability of a person who has sold shares in a company would extend to procuring the assent of the directors, if required, and to doing all that was necessary to invest the purchaser with the property in the shares, otherwise the consideration would fail,³ and the buyer would be entitled to demand the return of his purchase-money. But this question does not seem to have presented itself recently for discussion, and it may be doubted whether the authority of the cases cited in the note would now be followed.

The question of the jobber's discharge, where the dealing has been in securities which are fully paid up, and carry no further liability, will hardly now require any special notice. In such cases the only object of

Securities
involving no
further li-
ability.

¹ Post, p. 91; *Paine v. Hutchinson*, L. R., 3 Ch. 388; *Sherphard v. Murphy*, 16 W. R. 948.

² See *Remfry v. Butler*, E. B. & E. 887; *Stray v. Russell*,

1 E. & E. 888; post, p. 85.

³ *Wilkinson v. Lloyd*, 7 Q. B. 27; *Lloyd v. Crispe*, 5 Taunt. 249; *Birmingham v. Sheridan*, 33 Beav. 660.

the principal is to receive the purchase-money or the security, as the case may be; and unless this is accomplished he retains his rights under the contract made for him with the jobber, and may enforce them either at law or through the agency of his broker in the manner described in the preceding chapter; but, as we have there seen, the broker must enforce them without delay, otherwise he will be taken to have waived them, and the intermediate parties will be discharged. The delay which will be considered to amount to a waiver, is fixed by the rules as either two days or thirteen days, according to circumstances;¹ and if this time be allowed by the broker to elapse without enforcing his rights against the jobber, the principal will then be only able to claim against his broker for any loss incurred through his negligence.

¹ See ante, p. 70.

CHAPTER V.

TRANSFEROR AND TRANSFEREE.

WE have seen, then, that after acceptance of the name passed, execution of the transfer by the seller, and payment of the price, the jobber is discharged from all liability (assuming the name passed to be that of a person who is competent to contract); and upon this, all the intermediate steps which we have been discussing are overlooked, and the contract then remains to be completed between the ultimate buyer and the ultimate seller.

Contract between ultimate parties.

The contract which then arises between the ultimate parties is also to be interpreted according to the practice and usage of the Stock Exchange; and this introduces the distinction pointed out by Lord Romilly, M.R., in *Hodgkinson v. Kelly*,¹ that the contract is not, as has been supposed, the same as if the seller of shares had employed an agent to find out and enter into a contract with some particular buyer, and the buyer had done the same as to the seller, and that then only did a contract arise between buyer and seller; but, since both ultimate parties are bound by the usage, they are, from the beginning, bound to complete the contract, although ignorant of the person with whom they will complete until the day arrives when the name is passed. This contract amounts to an engagement by the ultimate transferor on one side and

¹ L. R., 6 Eq. 503.

the ultimate transferee on the other, that, through the instrumentality of certain other persons, whoever they may be, certain shares shall be sold and bought, and they undertake respectively to complete the contract with the person, whoever he may be, who buys on the one hand or sells on the other, although there is perhaps no identity between what the one sells and the other buys in respect of several such particulars as the date, the number of shares, the consideration, and even the time for completion.¹ In the cases cited it was strongly urged in argument that in the absence of such identity there could be no contract between the ultimate parties; but the objection was met by considering the usage of the Stock Exchange, under which the purchaser, upon receiving and retaining the transfer deeds and certificates, may be treated as having acquiesced in the transaction, and as having become, in fact, the purchaser of the security from the ultimate transferor.

Liabilities
of trans-
feror.

The transferor is accordingly bound from the beginning to deliver the securities on the day fixed, or within the time allowed by the rules; and he may be compelled to execute a proper transfer. He must also do whatever is necessary to entitle himself to deliver them; for example, he must pay all calls which have become due before the contract was made. It seems to have been formerly thought that the duty of the transferor would further extend to the procuring of the consent of the directors, if required, to the registration of the transfer, and that in fact the whole contract of sale was conditional on the ultimate introduction of the purchaser's name on

¹ *Grissell v. Bristow*, L. R., 188; *Evans v. Wood*, L. R., 5
3 C. P. 112; 4 C. P. 36; *Hawkins v. Maltby*, L. R., 3 Ch. Eq. 9; *Sheppard v. Murphy*,
16 W. R. 948.

the list of shareholders;¹ but this view is opposed to the current of modern authority, and would not now be acted on in dealing with contracts on the Stock Exchange.² The principle upon which all questions as to the rights and liabilities of the parties may be decided is this, that from the moment when the contract is entered into, the transferor becomes a trustee of the security for the immediate buyer or his nominee, and is, therefore, until registration of the transfer, in the position of legal owner without any beneficial interest. From this it follows directly that he is liable to account for any dividends which he may receive, or for any bonus or new shares which may be issued to him while his name remains on the register, in right of the shares which he has contracted to sell.³

And in the same way the transferee is bound from the beginning, that is to say, from the moment when the contract was entered into on his behalf, to pay for the securities when the time comes, and to take upon himself at once all the liabilities which attach to the ownership of the shares which he has contracted to buy, although he may perhaps have bought them from a dealer who is not the owner of them. At this stage the liability of the intending transferee is only towards his immediate seller; but it is, as we have seen in the last chapter, the same whether such seller is or is not the ultimate transferor. As soon, however, as the transferee, or his broker on his behalf, has ac-

Liabilities
of trans-
feree.

¹ *Birmingham v. Sheridan*, 33 Beav. 660. This case has subsequently been admitted by the judge who decided it to be no longer to be relied upon. See Lindley on Partnership, 714 (u); and L. R., 3 Ch. 393.

² *Stray v. Russell*, 1 E. & E. 888; *Evans v. Wood*, L. R., 5 Eq. 9; *Hodgkinson v. Kelly*, L. R., 6 Eq. 496; *Holmes v. Symons*, L. R., 13 Eq. 66.

³ *Stewart v. Lupton*, 22 W. R. 855. See also *ante*, p. 65.

cepted the name passed, a contract arises between the ultimate parties, which binds him at least to accept the transfer, and pay for the shares. It is immaterial at this point whether there is any further contract implied in law, because if the company is solvent and he does not accept and pay for the transfer, the shares will be sold out against him, and if the company is insolvent, the damages recoverable against him for non-acceptance would be the same as if there was a complete contract of indemnity. But it is clear that when the transfer is accepted, and the price paid by the broker of the transferee, the contract is complete between the ultimate parties.¹

Right of
transferor
to indemn-
ity.

The transferor, who has been hitherto in the position of a trustee for his immediate buyer, thereupon becomes a trustee for the transferee, or rather, for the equitable owner of the shares for the time being; the intermediate parties are, as we have seen, discharged from all further liability, and the transferor becomes entitled to indemnity from the equitable owner. Thus, for instance, if in consequence of his name remaining upon the register of shareholders he is compelled to pay any calls made subsequently to the sale, he may recover the amount,² although the transfer deeds may never have been executed by the transferee.³ It is, in fact, the duty of the transferee to execute the deeds and cause them to be registered,⁴ although by the Companies Act, 1867,⁵ directors are authorized to transfer on the application of either transferor or transferee.

¹ *Bowring v. Shepherd*, L. R., 6 Q. B. 209, per Brett, J.

² *Evans v. Wood*, L. R., 5 Eq. 9.

³ *Hawkins v. Maltby*, L. R., 4 Ch. 200.

⁴ *Morris v. Cannan*, 4 De G. F. & J. 581; *Cheale v. Kenward*, 3 De G. & J. 27; *Wynne v. Price*, 8 De G. & S. 310; *Shaw v. Fisher*, 5 De G. M. & G. 596.

⁵ 30 & 31 Vict. c. 131, s. 26.

A mortgagee of shares, where the mortgage is in the common form of an absolute transfer, becomes himself the equitable owner; but when the mortgage debt is paid off, and the mortgagor has elected to take a re-transfer of the shares, the parties stand in the position of transferor and transferee, and the mortgagee is entitled to indemnity accordingly.¹

After completion of the purchase, the real equitable owner of the shares, who is liable to indemnify the transferor, is the person by whom they are purchased and paid for, quite independently of the name in which they are registered. Thus, in the case of *Castellan v. Hobson*,² where the real buyer had passed the name of one of his workmen as the transferee with a view to evade future liability, and where there was therefore no privity of contract between him and the seller, it was held that the workman, a man of straw, having no right to receive anything in respect of the shares and no power of disposition over them, could not be said to be the owner, and the real buyer was held liable to indemnify the seller against calls which had been made.³ In this case the transfer had not been registered; but in the subsequent case of *Brown v. Black*,⁴ where under similar circumstances the real buyer had desired that his own name should not be used, but had caused the shares to be registered in the name of an infant transferee, this was not considered to affect the question. The registration was void as between the company and their creditors, and on the winding-up of the company the liquidators restored the name of the seller as a contributory. He was held to be a

Equitable
owner liable
to indem-
nify.

¹ *Pheni v. Gillan*, 5 Ha. 1. 118.

² L. R., 10 Eq. 47.

³ See also *Nickalls v. Furneaux*, L. R., W. N. 1869,

⁴ L. R., 15 Eq. 363; *Ib.* 8 Ch. 939.

trustee of the shares for the person whose money really bought and paid for them, and from that person he was therefore held entitled to claim indemnity.

Not dependent on privity of the parties.

This doctrine of trusteeship was not formerly recognized by the Common Law Courts, and we accordingly find this question there treated quite differently. They were constrained to hold that the right to indemnity arose out of a contract between the parties, and they therefore concluded that after execution of the transfer deed it was not possible for the seller to claim indemnity against anyone other than the transferee therein named, because it would be impossible to fix anyone else with privity.¹ Now, however, the equitable principles above stated are equally applicable to cases in all the Courts, and it will no longer be material to establish privity in order to support a claim for indemnity.

An indemnity may, no doubt, in many cases be claimed from persons other than the equitable owner; for example, in the cases we have just dealt with, the seller would, no doubt, in theory have been entitled to his remedy against the transferee; or again a person may so conduct himself as to be precluded from denying that he is the purchaser, and he may be bound to indemnify the seller notwithstanding that some other person is the real equitable owner.²

Not affected by the acts of the company.

It is to be observed that the question of the right to indemnity does not depend on the question whether the list of shareholders or contributories can be altered. The latter is a question purely between the

¹ *Lord Torrington v. Lowe*, L. R., 4 C. P. 26; see also *Humble v. Langston*, 7 M. & W. 517; *Walker v. Bartlett*,

17 C. B. 446.

² *Shepherd v. Gillespie*, L. R., 5 Eq. 293; *Ib.* 3 Ch. 764.

shareholder and the company, that is to say, between him and all the other shareholders in the company, and has not the slightest effect upon the equities which may exist between the buyer and the seller of the shares; while the question whether the buyer shall indemnify the seller against the consequences of remaining a shareholder is one with which the rest of the shareholders have nothing to do;¹ and, therefore, a refusal by the liquidators of a company to register a transfer will not relieve the transferee from his liability to the transferor.

And this right to indemnity will, on the same principle, continue after registration of the transfer, for the transferor may still, in the event of a winding-up of the company within twelve months, become liable to calls as a contributory in class B., if the registered holder of the shares is unable to pay; and, further still, the right to indemnity will remain even after the transferee has again sold and transferred the shares to a third party.²

Continues
after regis-
tration.

This claim for indemnity, as well as all other rights and remedies arising out of the contract between transferor and transferee, will pass to the personal representatives of the parties in the event of death; but whether the claim for indemnity would be provable in the bankruptcy of the transferee is a question which does not appear to have been yet decided. Before the passing of the Bankruptcy Act of 1869,³ it was held to be not provable,⁴ but the terms of the 31st section of that Act would seem to be large enough to admit such claims to proof.

Death.

Bankruptcy.

¹ *Hodgkinson v. Kelly*, per Lord Romilly, M. R., L. R., 6 Eq. 600.

Ib. 9 Q. B. 241.

² 32 & 33 Vict. c. 71.

³ *Kellock v. Enthoven*, L. R., 8 Q. B. 468, in Ex. Ch.;

⁴ *Holmes v. Symons*, L. R., 13 Eq. 266; *Kellock v. Enthoven*, supra.

Prior equitable interests.

It may be said, therefore, speaking generally, that the transferee, as between himself and his transferor, takes the place of the latter, both as regards the past and as regards what is to come;¹ although, with respect to the rights of third persons claiming a prior equitable interest, it is to be observed, that in the case of any negotiable securities transferable by delivery, such as ordinary securities to bearer,² the title of a bona fide purchaser for value, if acquired without notice of any such prior interest, cannot be impeached; and that the same rule applies to registered securities where a transfer has been executed, and the legal right to be registered has been similarly acquired.³ Whether it is applicable to other securities will depend in each case upon whether such negotiability can be established by evidence of usage. Thus, in the case of *Goodwin v. Robarts*,⁴ it was decided that the scrip of a foreign loan may be shown to be transferable to bearer by general usage where there is no enactment or agreement to the contrary. And in a subsequent case the same principle was applied to establish the negotiability of scrip certificates of shares in a banking company.⁵

Specific performance.

Specific performance of a contract may be decreed in cases where the securities contracted to be sold are limited in amount, or not always to be obtained in the market; but in the case of current securities the buyer's remedy for breach of the contract will

¹ *Mayhew's case*, 5 De G., M. & G. 837.

² *Gorgier v. Mievill*, 3 B. & C. 45.

³ *Dodds v. Hills*, 2 Hem. & M. 424; *Ward v. S. E. R. Co.*, 2 E. & E. 812; *Waterhouse v. Jamieson*, L. R., 2

Sc. App. 29; *Donaldson v. Gillot*, L. R., 3 Eq. 274; *Ex parte Sargent*, L. R., 17 Eq. 273.

⁴ L. R., 10 Ex. 76, 337; 1 App. Cas. 476.

⁵ *Rumball v. The Metropolitan Bank*, 2 Q. B. D. 194.

generally be confined to an action for damages. This was decided with reference to South Sea Stock in the leading case of *Cuddee v. Rutter*,¹ where it was considered that the plaintiff would not suffer at all by the non-performance of the agreement specifically if the defendant paid him the difference between the contract price and the market price at the time of action, and this principle has been frequently acted on in subsequent cases.² With this exception, an action will lie for the specific performance of the contract, if it is capable of being performed,³ even although the directors of the company should refuse to allow the transfer.⁴ It may often happen, especially in a winding-up, that power is given to the directors or liquidators to refuse registration, but that is no reason why the Court should not order it to be done if it is possible,⁵ because the contract between the intending transferor and transferee is valid without the consent of the directors, and is independent of it.⁶

Specific performance has also been granted of a contract entered into for the sale of scrip certificates in a proposed railway company before its incorporation by Act of Parliament.⁷ But where shares have been sold in a projected company which is never formed, so that the subject-matter of the contract

¹ 5 Vin. Ab. 538, pl. 21.

² See notes to *Cuddee v. Rutter*, 1 L. C., Eq. 848.

³ *Cheale v. Kenward*, 3 De G. & J. 27; *Duncuft v. Albrecht*, 12 Sim. 189; *Shaw v. Fisher*, 2 De G. & S. 11; 5 De G., M. & G. 596.

⁴ *Poole v. Middleton*, 29 Beav. 646.

⁵ *Robins v. Edwards*, 15 W. R. 1065.

⁶ The contrary appears to have been decided in *Birmingham v. Sheridan*, 33 Beav. 660; but this case is not now to be relied on, see ante, p. 85.

⁷ *Beckett v. Bilbrough*, 8 Ha. 188; but see *Jackson v. Cocker*, 4 Beav. 59, where the vendor had not taken any steps to become proprietor of the shares contracted to be sold.

never has any existence, this would be otherwise. In such a case it has been held that the purchaser is entitled to recover back his money from the vendor as on a failure of consideration.¹

When
tender of
transfer
deed a con-
dition pre-
cedent.

In the case of *Stephens v. De Medina*,² it was held that the purchaser of registered shares, transferable only by deed, must tender a transfer deed to the seller for execution before he can enforce the contract by action. In the conveyance of real property, if no special provision is made in the contract, the expense of the conveyance falls on the purchaser, and it is his duty to prepare and tender it. And the practice is the same with regard to terms for years; and now, since the decision of this case, the rule is the same for conveyances of property in shares,—the purchaser must bear the expense of stamps and transfer, and the tender of the transfer to the vendor for execution, in cases where a deed is necessary,³ is a condition precedent to an action for not transferring the shares.

On the other hand, it is the custom of the Stock Exchange for the seller to prepare a deed of transfer into the name of the purchaser (but at the expense of the latter), and the tender of this deed duly executed is a condition precedent to a claim for payment of the purchase-money. It would seem, therefore, that the above case could hardly be treated as an authority where the transaction has been intended by the parties to be completed in accordance with the usages of the Stock Exchange; and, even in transactions which are independent of those usages, a question might arise as to whether it

¹ *Kempson v. Saunders*, 4 Bing. 5.

² 4 Q. B. 422; followed in *Bowiby v. Bell*, 3 C. B. 281,

and ante, p. 48. See also *Franklyn v. Lamond*, 4 C. B. 637.

³ See post, p. 96.

would apply where the instrument of transfer used is that required by the more recent Companies Acts, alluded to below.

The method of transferring shares, and the qualifications, if any, which may be imposed on the right of the holder to transfer them, will depend in each case upon the constitution of the company, and the form of the articles of association. The shares may be transferable by delivery, by indorsement, or by execution of a deed or other instrument in writing to be registered at the office of the company; and the registration may or may not require the assent of the directors.

Methods of transfer.

The following form is that generally used for instruments of transfer. It is similar to that given in the Companies Clauses Act,¹ and in the Companies Acts of 1856² and 1862:³—

Transfer deed.

I, A. B., of ———, in consideration of the sum of £—— paid by C. D., of ———, hereinafter called the said transferee, do hereby bargain, sell, assign, and transfer to the said transferee, ——— shares, numbered ——— to ——— [*or, £—— consolidated stock, or as the case may be*], of and in the undertaking called the ——— company, to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same immediately before the execution hereof; and I, the said transferee, do hereby agree to accept and take the said shares [*or stock*], subject to the conditions aforesaid.

As witness our hands and seals, this ——— day of ———, in the year of our Lord one thousand, &c.

Signed, sealed, and delivered, &c.

There is generally appended to the transfer a note to the effect that the consideration money set forth in it may differ from that which the first seller will receive, owing to subsales by intermediate buyers,

Consideration money.

¹ 8 Vict. c. 16.

² 19 & 20 Vict. c. 47.

³ 25 & 26 Vict. c. 89, Table A.

but that the Stamp Act requires in such case that the consideration money paid by the ultimate purchaser shall be the one inserted in the instrument, as regulating the ad valorem duty. Cases have occurred where the transferor has refused to execute a deed containing an apparent acknowledgment by him of the receipt of a sum larger than that really paid to him;¹ and the Courts seem to have considered that in the absence of such an explanatory note on the face of the instrument, he would be justified in refusing to sign what is not in fact the truth.² The form is in any case unsatisfactory, since, by the addition of a very few words, the real nature of the transaction might be set out so as to be intelligible to persons who are ignorant of the practice of the Stock Exchange.

Stamps.

The instrument of transfer must be duly stamped,³

¹ *Mowburn v. Eaton*, 20 L. T., N. S. 449.

² *Case v. M'Clellan*, 20 W. R. 113.

³ The stamps required are as follows:—

On any transfer, whether on sale or otherwise,	£	s.	d.
(1) of any Bank of England Stock	0	7	9
(2) of any stock of the East India Company ..	1	10	0
(3) of any debenture stock, or funded debt of any company or corporation, or of any Canadian Consolidated £5 per Cent. Stock inscribed in the United Kingdom (unless the stamp duty be compounded for by the government of Canada), for every £100, and also for any fractional part of £100 of the nominal amount transferred	0	2	6
On any transfer of any mortgage, bond, debenture or foreign security duly stamped (see p. 64), for every £100, and also for any fractional part of £100 of the amount transferred	0	0	6
On any transfer on sale of any other securities, where the amount of the consideration for the sale does not exceed £5	0	0	6
exceeds £5 and does not exceed £10	0	1	0
" 10 " " 15	0	1	6
" 15 " " 20	0	2	0
" 20 " " 25	0	2	6

the amount of stamps required depending generally upon the amount of consideration money. Where the consideration itself consists of stock or marketable securities, the stamp must be regulated by their value.¹ Where any security has been bought for one consideration for the whole, but is transferred to the buyer in portions by different instruments, the parties are allowed to apportion the consideration as they like, provided that a distinct consideration for each portion is set forth in the transfer relating to it. Where any security has been bought for one consideration for the whole by several buyers, but is transferred to them respectively by separate transfers, each transfer must bear a distinct stamp. The stamp duty is payable on all transfers executed in this country, although the security may consist of shares in an undertaking situate abroad.²

Shares may be transferred by instruments in other Informal transfers.

	\$	s.	d.
exceeds £25 and does not exceed £50	0	5	0
" 50 " " 75	0	7	6
" 75 " " 100	0	10	0
" 100 " " 125	0	12	6
" 125 " " 150	0	15	0
" 150 " " 175	0	17	6
" 175 " " 200	1	0	0
" 200 " " 225	1	2	6
" 225 " " 250	1	5	0
" 250 " " 275	1	7	6
" 275 " " 300	1	10	0
" 300, for every £50 and also for any fractional part of £50 of such amount or value	0	5	0
On mortgage of any stock or marketable security, for every £5,000, and also for any fractional part of £5,000 of the amount secured	0	10	0
On any other kind of transfer	0	10	0
Transfers of shares in the government or parliamentary stocks or funds are exempt.			

¹ 33 & 34 Vict. c. 97, s. 71. Other special cases will be found in the following sections.

² *Wright v. The Commissioners of Inland Revenue*, 25 L. J., Ex. 49.

forms,¹ but it is desirable for convenience of registration to adopt the one given above. For example, if a deed of transfer includes a conveyance of other property, it might be extremely inconvenient to leave it at the office of the company, and indeed, if it were in complicated form, the secretary might be justified in refusing to register it.²

Where deed
necessary.

Under the Companies Clauses Act, it was necessary that all transfers of shares should be by deed, but under the Companies Act of 1862,³ shares are to be transferable in the manner provided by the regulations of the company, which may or may not require the execution of a deed.⁴ For example, under the provisions of Table A of this Act, which constitute the regulations of every limited company formed under the Act, unless excluded or modified by the articles of association, it is only necessary that the "instrument" of transfer be executed by the transferor and transferee; there is, apparently, nothing to make the sealing or delivery of a deed compulsory.

Blank
transfers,
when void.

In the case, therefore, of a company subject to the Companies Clauses Act, or of a company whose regulations require a transfer to be by deed, a transfer in blank, that is to say, signed by the transferor, leaving a blank for the name of the transferee, or for the description of the shares, being wholly inoperative as a deed, is void at law;⁵ neither will the Committee of the Stock Exchange interfere (except under special circumstances) in any question arising out of the delivery of securities by transfer in blank. A deed which is void in this way may

¹ See *Copeland v. N. E. R. Co.*, 6 E. & B. 277.

² *R. v. General Cemetery Co.*, 1b. 415.

³ 25 & 26 Vict. c. 89, s. 22.

⁴ See *Ex parte Sargent*, L.

R., 17 Eq. 273, where the transfer was by deed.

⁵ *Hibbithwaite v. M'Morine*, 6 M. & W. 200; *Swan v. North British Australasian Co.*, 7 H. & N. 603; 2 H. & C. 175.

be made good by filling up the blanks in the presence of the parties who had executed it, the ratification by them being evidence of a re-delivery.

But, inasmuch as the contract for the sale of the shares is binding from the moment it was made, quite independently of any deed, or even of any writing, the mere execution of a void deed will of course not prevent the party from being held to his bargain, or from being liable in equity to execute a proper legal transfer;¹ this question will depend entirely upon the validity of the original contract.²

Effect upon
the contract.

Where the regulations of the company do not require the instrument of transfer to be under seal, a blank transfer will be perfectly valid, although purporting to be executed as a deed, for the addition of a seal will not render the instrument less effectual than it would have been without a seal.³

When valid.

How far the execution of a void transfer deed would operate as an estoppel, that is to say, how far a person who negligently executes a transfer deed in blank would be estopped as between himself and an innocent person who has acted upon the faith of its being valid, is a question which does not seem to have been decided. It was very much discussed in the well known case of *Swan v. N. British Australasian Company*,⁴ in which, after considerable difference of opinion, it was held by some of the judges that where a deed is void in that way there could be no estoppel. In that case the transfer deed had been executed altogether in blank; the person who exe-

When operating as
estoppel.

¹ *Morris v. Cannan*, 4 De G., F. & J. 581. But as to scrip, see *Jackson v. Cocker*, 4 Beav. 59, and *Beckitt v. Bilbrough*. 8 Ha. 188.

² See *Tayler v. Great Indian Peninsular Railway Co.*, 4 De G.

& J. 559.

³ *Ortigosa v. Brown*, 38 L. T., N. S. 145.

⁴ 7 C. B., N. S. 400; 7 H. & N. 603; and in Ex. Ch., 2 H. & C. 175.

cuted it owned shares in two companies, and gave authority to his broker to fill them up with shares in one company, and the broker filled them up with shares in the other company, which were afterwards transferred to an innocent person. The Court held that the whole thing was a forgery, and that the proximate cause of the loss was not the negligent execution, but the forgery by the broker. The decision does not go the length of saying that if the broker had filled them up with the same shares which he was authorized to insert, the deed being, nevertheless, void in law, because executed in blank, the principal might not then have been estopped.¹

Certificates.

It is usual for the directors of a company to require the production of the certificates before allowing a transfer to be registered, but this seems to be a matter entirely within their discretion. The fact of the name of the transferor being on the register is conclusive as to his legal title, and the certificate is merely a solemn affirmation under the seal of the company that his name is on the register as the owner of the shares or stock.² It is given in order to enable him, upon a sale of his shares, to prove his title to them to the satisfaction of a purchaser; and, on the Stock Exchange, the transfer deed must be accompanied by this certificate, in order to constitute a valid delivery of the security; the practice, however, is not to require the actual delivery of the certificate to the purchaser, because, in many cases, the seller may not happen to have a certificate representing the exact amount sold, but, instead of this, the selling broker deposits the certificate with the company, or with the secretary to the Stock Exchange, and gets

Must accompany transfer deed.

¹ See *Hunter v. Walters*, L. R., 7 Ch. 75.

² *Shropshire Union, &c. Co. v. R.*, L. R., 7 H. L. 496.

indorsed on the deed a memorandum that it has been so deposited. This memorandum is treated in the House as a sufficient acknowledgment, and is accepted in lieu of the certificates themselves.

If it is sought to create an equitable mortgage of the security by deposit of the certificates alone,¹ unaccompanied by transfer deed, it will be necessary for the mortgagee to inquire into the position of the intending mortgagor, for if the latter has only the legal title, and is in truth merely the trustee for another, the equitable mortgagee will be unable to enforce his claim in opposition to the original cestui que trust. To make himself perfectly safe, therefore, he should obtain at least an executed transfer, and, perhaps, go further and procure registration also.

Effect of certificate without transfer deed.

The transfer of Bank Stock, or government securities transferable at the Bank of England, is carried out as follows:—A ticket, which is printed and supplied by the Bank, is issued, with the name of the buyer, by the purchasing broker, and passed in the same way as the ticket in the case of ordinary registered securities. It is different in form from the ordinary ticket, in that the name of the transferor must be inserted by the ultimate selling member. The ticket is then taken to the Bank, where it is copied into a book kept for the purpose; the transferor signs this book, and also a receipt² for the purchase-money, the signatures being witnessed by a clerk of the Bank. Transfers of government securities can be made at the Bank, without fee, on any business day except Saturday³ up to half-past two, if

Transfer of Government stock.

¹ See *Ex parte Union Bank of Manchester*, L. R., 12 Eq. 354.

² This receipt is exempt from stamp duty.

³ On Saturdays no ticket can be put forward without a fee of 2s. 6d., and no transfer made after one o'clock, except when it happens to be consol account day.

the ticket has been put forward before one o'clock, otherwise a fee of 2*s.* 6*d.* is charged. This fee is payable by the seller, but it may be claimed by him from the buyer if, owing to delay on the part of the latter, the ticket has not been passed to him at least ten minutes before one. On the transfer of Bank stock a fee is always payable by the seller, amounting (inclusive of the transfer stamp of 7*s.* 9*d.*) to 9*s.* where the amount of stock transferred is 25*l.* or under, and to 12*s.* where it is above that sum. By the custom of the Stock Exchange these fees are repaid by the purchaser to the transferor, if a jobber, where the amount of stock bought is under 500*l.* A formal identification of the transferor is always required by the Bank, and, therefore, where he is not personally known to them, he is usually accompanied and identified by a broker or solicitor with whom they are acquainted. The receipt is handed over to the transferee, who is recommended, as a protection against fraud, to sign the book also, and thereby accept the transfer.

Certificates.

Under the National Debt Act, 1870,¹ a person who is entered in the books of the Bank as the holder of any of the three per cent. annuities, may obtain a certificate with coupons annexed, payable to bearer, which would then be transferable without the formalities described above; or the certificate may be converted into a nominal certificate, by inserting the name of any person as the owner, and he alone is then recognized as such at the Bank. In the event of the loss or destruction of a stock certificate or coupon, a new one will be issued by the Bank, on receiving indemnity to their satisfaction.

Transfers of

Shares in cost-book mining companies are ordinarily transferred by a document, in which the trans-

¹ 33 & 34 Vict. c. 71, Part V.

feror acknowledges that he has transferred, and the transferee acknowledges that he has accepted, the shares mentioned. This document is signed by both parties, and forwarded to the purser by the transferee, and is the authority to the purser to register the transferee as a shareholder. By the Stamp Act¹ a duty of sixpence is imposed on such an authority, or on any notice of the transfer sent to the purser.

¹ 33 & 34 Vict. c. 97, s. 3.

CHAPTER VI.

DEFAULTERS.

**Insolvency
of member.**

IF a member of the Stock Exchange becomes unable to fulfil his engagements in the House, he is declared a defaulter by direction of the chairman, deputy-chairman, or any two members of the Committee. It is also open to himself, or his outside creditors, to institute proceedings in bankruptcy or liquidation in the ordinary manner.¹ In either case the defaulter ceases ipso facto to be a member of the House, but (unless proceedings in bankruptcy are commenced) the Committee do not in consequence cease to have control over his affairs, because it is generally the desire of the defaulter to be re-admitted as a member, and this re-admission is conditional on his compliance in every respect with the requirements of the Committee. The declaration of default is made publicly in the House, but was until lately not communicated in any way to the outside world, it being in fact open to doubt whether such a communication would not have amounted to a libel; the Committee are, however, now empowered by the rules to notify to the public the name of any member who has become a defaulter. The estate of the defaulter is then administered in conformity with the rules of the Stock Exchange, which differ in many respects very materially from the usual bankruptcy laws. They are framed, like the rest of the rules,

¹ Brokers and jobbers are included in the list of traders in the schedule to the Bankruptcy Act.

with the object of obtaining the most speedy and effectual settlement of all questions at issue without the intervention of the law, and so far as regards questions arising between members of the House, there is no doubt that they are well adapted to their purpose; they do not, however, deal with the liabilities of the defaulter outside the Stock Exchange; and, even if they did so, they would hardly be allowed to supersede or interfere with the ordinary law of bankruptcy. In cases, therefore, where there are no outside creditors, or where such creditors have become consenting parties, and have been admitted by the Stock Exchange creditors to be represented by a member at their meetings, and to participate in the assets on an equal footing with themselves, the rules are applicable, and binding at law; in other cases the general law of the country will step in, and must step in, and will uphold the rights of the creditors which the rules could not take away from them.

This point was discussed in the case of Cooke,¹ a member, who on becoming unable to meet his engagements, and having been declared a defaulter, had handed over his assets to the official assignees for distribution among his Stock Exchange creditors according to the rules in the usual manner. Cooke stated that he had no debts outside the Stock Exchange, and the official assignees thereupon apportioned the assets among the Stock Exchange creditors; but it afterwards appeared that he had outside debts, and he was declared a bankrupt. The trustee in the bankruptcy was held entitled to claim from the official assignees a return of the assets handed to them; the outside creditors were

Position of
trustee in
bankruptcy.

¹ *Ex parte Saffery*, L. R., 4 Ch. D. 555; 3 App. Cas. 213.

not bound by what had been done, their rights were not affected, and the handing over the assets of the defaulter to the official assignees was held to amount to a *cessio bonorum*, and to be an act of bankruptcy and therefore void as against the trustee.

Right of trustee to differences.

In this case the trustee also recovered from the official assignees the differences due to the defaulter's estate which had been collected in the House and distributed according to the rules. This part of the case does not appear to have been reported, but it is conceived that, although in the Stock Exchange these differences are distributed in a different manner from the rest of the assets, yet that they do form part of the assets, and must, therefore, pass to the trustee in the event of bankruptcy.

Assignment of claims to non-members.

Members of the Stock Exchange are not allowed by the rules to gain any advantage in such cases by selling or assigning their claims to non-members without the concurrence of the Committee, and without giving due notice to the official assignees.

Procedure on the Stock Exchange.

The method of dealing with cases of default on the Stock Exchange is as follows: usually the member himself communicates to the secretary his inability to fulfil his engagements, but should he give private intimation to this effect to a creditor in the House, it is the duty of the creditor not to make any compromise with the defaulter, but to immediately communicate with the chairman, deputy chairman, or two members of the Committee, in order that the member in default may be immediately declared. A creditor is not allowed to connive at a private failure by accepting less than the full amount of his debt, and if this be done the creditor is liable to refund any money or securities received from the defaulter, provided he be publicly declared within two years from the time of such compromise, the property so refunded being

Private failures.

applied to liquidate the claims of subsequent creditors. Any arrangement for settlement of claims, in lieu of bonâ fide money payment, on the day when such claims become due, is considered as a compromise, and is subject to this provision. In case the committee obtain knowledge of any private failure, the name of the defaulter is at once publicly declared.

Members are also forbidden to carry on business for a defaulter for his benefit without the consent of his creditors and the sanction of the committee, but in the case of the default of a broker, permission is generally granted to some other broker to carry on his business pending the settlement of his affairs.¹ Nor are members allowed to deal with a defaulter on his own account until he has either discharged his liabilities, or has been re-admitted as a member of the House.

Dealings
for or with
defaulters.

After the declaration of default, the first step taken is to hold a meeting of creditors, at which the defaulter himself attends and makes a statement of his affairs, and of his debts, if any, which are owing outside the House. He must also, if required, give up the name of any principal indebted to him, and within fourteen days from the date of his failure he must deliver to the official assignees or to his creditors, his original books and accounts, and a statement of the sums owing to and by him in the House at the time of his failure.

Meeting of
creditors.

Surrender
of books.

The assets of the defaulter are then handed over to the official assignees for distribution under the direction of the creditors. These assignees are appointed annually by the Committee, and their duty is to obtain from the defaulter his original books of

Official as-
signees.

¹ See ante, p. 50.

Assignees to
fix prices.

account, and a statement of the sums owing to and by him; to attend meetings of creditors, and to summon the defaulter before such meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in conformity with the rules, regulations, and usages of the Stock Exchange. They collect and pay the assets to the credit of their joint account at a bank, and distribute them as soon as possible. In order to collect the assets speedily they are empowered to fix publicly the prices current in the market immediately before the declaration, at which prices all persons having accounts open with the defaulter must close their transactions by buying of or selling to him such stocks, shares, or other securities as he may have contracted to take or deliver, the differences arising from the defaulter's transactions being paid to or claimed from the official assignees. Any dispute which may arise as to the prices named is decided by two members of the Committee. Differences are not claimed until they become due.

Claims of
non-mem-
bers.

Non-members are under certain circumstances, as we have seen, allowed an equal participation of assets subject to the same conditions as members; but any payments or claims on a defaulter's estate which do not arise out of Stock Exchange transactions are not recognized, because members are not allowed to be engaged in any other business than that of the Stock Exchange. For this reason, too, it is very improbable that any large amount of unsecured debts should be owing outside the House, while as regards household or other small debts which the defaulter may owe outside, a sufficient sum is generally set apart by the creditors at their first meeting to satisfy them in full.

Payments or claims are not admitted if they arise out of transactions which are prohibited by the rules, or specially stated to be not recognized or not sanctioned by the Committee.¹ The refusal of their sanction, it may be observed, would not affect the rights of the parties to enforce any contract at law. It may practically be taken to amount merely to this: that although the Committee have the power of expelling members for non-fulfilment of contracts generally, yet they will not exercise the power in certain cases; but the contract would still remain good at law as between the parties to it,² and might be insisted on if the defaulter were declared a bankrupt.

Transactions not recognised.

A member who has received a difference on an account, prior to the regular day for settling the same, or who has received a consideration for any prospective advantage, whether by a direct payment of money, or by the sale or purchase of stock at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling the transaction for which the consideration was received, must (in case of the failure of the member from whom he received such difference or consideration) refund the same for the general benefit of the creditors; and any member who has, under the circumstances above stated, paid or given such difference or consideration to a defaulter, must again pay the same to his creditors; so that, in each case, all persons may stand in the same position as if no such prior settlement or other arrangement had taken place; and a creditor receiving under any circumstances a larger propor-

Receiving claims prospectively.

¹ See ante, p. 56.

² *Marten v. Gibbon*, 33 L. T., N. S. 561.

cuted it owned shares in two companies, and gave authority to his broker to fill them up with shares in one company, and the broker filled them up with shares in the other company, which were afterwards transferred to an innocent person. The Court held that the whole thing was a forgery, and that the proximate cause of the loss was not the negligent execution, but the forgery by the broker. The decision does not go the length of saying that if the broker had filled them up with the same shares which he was authorized to insert, the deed being, nevertheless, void in law, because executed in blank, the principal might not then have been estopped.¹

Certificates.

It is usual for the directors of a company to require the production of the certificates before allowing a transfer to be registered, but this seems to be a matter entirely within their discretion. The fact of the name of the transferor being on the register is conclusive as to his legal title, and the certificate is merely a solemn affirmation under the seal of the company that his name is on the register as the owner of the shares or stock.² It is given in order to enable him, upon a sale of his shares, to prove his title to them to the satisfaction of a purchaser; and, on the Stock Exchange, the transfer deed must be accompanied by this certificate, in order to constitute a valid delivery of the security; the practice, however, is not to require the actual delivery of the certificate to the purchaser, because, in many cases, the seller may not happen to have a certificate representing the exact amount sold, but, instead of this, the selling broker deposits the certificate with the company, or with the secretary to the Stock Exchange, and gets

Must accompany transfer deed.

¹ See *Hunter v. Walters*, L. R., 7 Ch. 75.

² *Shropshire Union, &c. Co. v. R.*, L. R., 7 H. L. 496.

indorsed on the deed a memorandum that it has been so deposited. This memorandum is treated in the House as a sufficient acknowledgment, and is accepted in lieu of the certificates themselves.

If it is sought to create an equitable mortgage of the security by deposit of the certificates alone,¹ unaccompanied by transfer deed, it will be necessary for the mortgagee to inquire into the position of the intending mortgagor, for if the latter has only the legal title, and is in truth merely the trustee for another, the equitable mortgagee will be unable to enforce his claim in opposition to the original cestui que trust. To make himself perfectly safe, therefore, he should obtain at least an executed transfer, and, perhaps, go further and procure registration also.

Effect of
certificate
without
transfer
deed.

The transfer of Bank Stock, or government securities transferable at the Bank of England, is carried out as follows:—A ticket, which is printed and supplied by the Bank, is issued, with the name of the buyer, by the purchasing broker, and passed in the same way as the ticket in the case of ordinary registered securities. It is different in form from the ordinary ticket, in that the name of the transferor must be inserted by the ultimate selling member. The ticket is then taken to the Bank, where it is copied into a book kept for the purpose; the transferor signs this book, and also a receipt² for the purchase-money, the signatures being witnessed by a clerk of the Bank. Transfers of government securities can be made at the Bank, without fee, on any business day except Saturday³ up to half-past two, if

Transfer of
Government
stock.

¹ See *Ex parte Union Bank of Manchester*, L. R., 12 Eq. 354.

² This receipt is exempt from stamp duty.

³ On Saturdays no ticket can be put forward without a fee of 2s. 6d., and no transfer made after one o'clock, except when it happens to be consol account day.

general conduct has been irreproachable; and the second class, for cases marked by indiscretion, and by the absence of reasonable caution.

Effect of re-admission.

The effect of re-admission is not equivalent to a discharge under the bankruptcy laws, nor does it operate as a discharge in full of Stock Exchange debts; they can only be discharged by payment. On the other hand, one member is not allowed to sue another without the permission of the Committee, so that in the result the whole matter rests with the Committee, who every year, upon the re-admission of members, take specially into their consideration the question of the position of members who have been declared defaulters; and if they think that such a member is in a position to make some further payment, they intimate their opinion to him, and it frequently happens that payments are accordingly made from time to time towards the liquidation of old liabilities.

CHAPTER VII.

SPECIAL SETTLING DAYS AND OFFICIAL QUOTATION OF
NEW LOANS.

THE circumstances under which the Committee will Quotation.
grant a special settling day for transactions in the scrip of a new loan, or in the shares of a new company, have already been briefly alluded to. The refusal to fix such a settling day has the effect of rendering nugatory all contracts made previously for the special settlement, and is therefore comparatively rare; but when, either at the time of the application for a settlement, or shortly afterwards, the further application is made to the Committee for a "quotation," that is, for their authority that the bonds of the loan or the shares of the company may be quoted in the official list, then greater strictness is exercised. The grounds upon which the Committee will allow a quotation seem to have been the subject of more misapprehension outside the Stock Exchange than any of the other customs described in these pages. It is often supposed that the requirements of the Committee are directed chiefly, if not entirely, to the soundness and general stability of the loan or company to which they are applied, and the quotation is accordingly looked upon as a sort of certificate of the soundness of a new scheme. In point of fact the Committee do not, and could not, profess to do more than ensure due compliance with all necessary formalities in bringing out a new concern, so that its securities may be safely dealt in,

without in any way entering into the question of the ultimate probability of success.

Official list.

The official list of prices is published daily with the sanction of the Committee; and without their sanction no member is allowed to publish and sell any such list. It consists of two distinct parts: one, the record of bargains marked during business hours,¹ which is, strictly speaking, official; and the other, the closing quotations, which are not really under official supervision at all. Under the heading of "business done," no price is inserted unless the bargain represented has been made in the Stock Exchange, between members, at the market price; nor would it be inserted on the authority of one only of the contracting parties if he were to refuse, when required by a member of the Committee, to disclose the name of the member with whom he has dealt. In the list of "closing quotations" prices are inserted which are supplied to the publisher or his assistants by the dealers in each market, but which are in no way officially revised. In the case of non-current securities these quotations may, owing to the absence of business, be only nominal, and it does not always follow that anyone could be found who would be willing to deal at these prices, so that they are not always to be depended upon, and are, indeed, in some cases seriously misleading.

Business done.

Closing quotations.

Fraud.

In the official list of business done, the Committee guard, as far as possible, against any conspiracy to raise or lower the price of a security, by refusing to allow bargains to be marked which are outside the current quotations; if, therefore, any fictitious bargain should be marked, it is open to other members to object, and to have it struck out on obtaining the

¹ See ante, p. 7.

authority of the chairman, deputy-chairman, or two members of the Committee.

It is a criminal offence to conspire to raise the price of public securities by false rumours, even although it be not shown to be done with a view of defrauding any specified persons. It is a public mischief, complete even independently of any persons becoming purchasers at the enhanced prices.¹

False rumours.

The requirements of the Committee on an application for a special settlement, or for a quotation, are set out in the following rules:—

“The Committee will not recognize new bonds, stock, or other securities issued by any foreign government that has violated the conditions of any previous public loan raised in this country, unless it shall appear to the Committee that a settlement of existing claims has been assented to by the general body of bondholders. Companies issuing such securities will be liable to be excluded from the official list.

New bonds of foreign Governments violating conditions of previous loans.

“The Committee will not, after the restoration of peace, recognize or allow the quotation of any loan raised by a power whilst at war with Great Britain.

Loans raised by powers while at war with Great Britain.

“The Committee will appoint a special settling day for transactions in the scrip of a new loan, provided the requisite documents are in due order, that the issue is not in contravention of the two preceding rules, and that no allegation of fraud is substantiated.

Settlement for new loans.

“The application for a special settling day for bargains in foreign, colonial, or other loans, must be laid before the secretary of the share and loan department, who shall give three days' public notice previously to its being considered by the Committee.

¹ *R. v. de Berenger*, 3 M. & S. 67; see *R. v. Esdaile*, 1 F. & F. 213.

"The application must be accompanied by the prospectus, by notarial copies, or translations, or other satisfactory evidence of the powers under which the loan is contracted, and by a certificate, verified by the statutory declaration of the contractors or agents, of the amount allotted to the public, and that the scrip or bonds are ready for delivery.

Quotations
of new
loans.

"The Committee will order the quotation of the scrip and bonds of a foreign, colonial, or other loan, the dividends of which are payable in this country, provided such loan has been publicly negotiated by tender, contract or otherwise, and provided the bonds specify the amount and conditions of the loan, the powers under which it has been contracted and the numbers and denominations of the bonds issued, and bear the autographic signature of the contractor or properly authorized agent.

"Bonds will not be admitted to quotation until they have been approved by the Committee.

"Bonds, the dividends of which are payable abroad, may be quoted upon satisfactory proof of the amount created, and of the official quotation in the country where issued.

Settlement
for shares of
new com-
pany.

"The Committee will appoint a special settling day for transactions in the shares of a new company, provided that no allegation of fraud be substantiated; that there has been no misrepresentation or suppression of material facts; that sufficient scrip or shares are ready for delivery; and that no impediment exists to the settlement of the account.

Documents
required.

"The secretary to the share and loan department shall give one week's notice to the Stock Exchange of any application for a special settling day for transactions in the shares of a new company, previously to such application being submitted to the Committee,

and shall require the production of the following documents: viz., the prospectus, the Act of Parliament, the articles of association, or a certificate that the company is constituted upon the cost-book system, under the Stannary Laws; the original applications for shares, the allotment book, signed by the chairman and secretary to the company, and a certificate verified by the statutory declaration of the chairman and the secretary, stating the number of shares applied for, and unconditionally allotted to the public, the amount of deposits paid thereon, and that such deposits are absolutely free from any lien; the banker's pass book, and a certificate from the bankers, stating the amount of deposits received.

"The Committee will order the quotation of a new company in the official list, provided that the company is of bonâ fide character, and of sufficient magnitude and importance; that the requirements of the preceding rule have been complied with, and that the prospectus has been publicly advertised, and agrees substantially with the Act of Parliament, or the articles of association, and in the case of limited companies contains the memorandum of association; that it provides for the issue of not less than one-half of the nominal capital, and for the payment of ten per cent. upon the amount subscribed, and sets forth the arrangements for raising the capital, whether by shares fully or partly paid up, with the amounts of each respectively, and also states the amount paid, or to be paid, in money or otherwise to concessionnaires, owners of property, or others on the formation of the company, or to contractors for works to be executed, and the number of shares, if any, proposed to be conditionally allotted; that two-thirds of the whole nominal capital proposed to be issued have been applied for and unconditionally

Quotation
of shares of
new com-
pany.

allotted to the public (shares reserved or granted in lieu of money payments to concessionnaires, owners of property or others, not being considered to form part of such public allotment); that the articles of association restrain the directors from employing the funds of the company in the purchase of its own shares; and that a member of the Stock Exchange is authorized by the company to give full information as to the formation of the undertaking, and be able to furnish the Committee with all particulars they may require.

"In cases where fully paid shares have been granted in lieu of money payments, an official certificate will be required that the contract providing for the issue of such shares has been filed with the registrar of joint stock companies, as prescribed by the 25th section of the Companies Amendment Act, 1867.

Of foreign
companies.

"Foreign companies partly subscribed for and allotted in this country, shall not, unless under special circumstances, be allowed a quotation in the official list, until they have been officially quoted in the country to which they belong.

Issue of
new shares
within
twelve
months of
special
settling.

"A company issuing, or promising to issue, new shares within twelve months after the first settling day appointed by the Committee, unless under special circumstances, shall be liable to exclusion from the official list."

Dealings
before allot-
ment.

The power thus reserved by the Committee of refusing a settlement and rendering void all bargains previously made affords a remedy against the frauds and dishonest practices to which the custom of dealing in shares before allotment almost inevitably leads: These dealings commence as soon as a new loan or company is made known to the public, and the sort of transactions to which they give rise may be best

described in the language of the Report of the recent¹ Commission.

Under the Companies Acts, 1862 and 1867, it is competent to any seven persons to form a company, fix the amount of its proposed capital, and agree together as to the objects or purposes of the new association. This done, a prospectus is issued to the public, who are invited to send in letters of application for shares accompanied by a deposit of money. Within a limited time, varying perhaps from a few hours to many weeks, the list of applications is closed and the promoters of the new company proceed to allot the shares among the applicants in such numbers and proportions as they please. Sometimes it is declared in the prospectus that a portion of the shares will be reserved for particular purposes and not allotted. Sometimes they are so reserved and not allotted, without notice in the prospectus of any such intention.

Formation
of company.

In such a system it is obvious that the problem for the promoters of a new undertaking is, how to get the whole or a sufficient number of shares applied for by the public to start the company.

It is here that the operations on the Stock Exchange come into play, and in a manner the most simple and the most effective.

It must be remembered that an investor—one of the general public—has in ninety-nine cases out of a hundred nothing to go by in forming a judgment on the merits of an undertaking but the unproved and unvouched statements and calculations to be found in the prospectus; and these would often, even in the case of the best and soundest adventures, be quite insufficient to tempt him.

Prospectus.

¹ 31st July, 1878.

Effect of
quotation at
a premium.

But what does tempt him is the statement which he reads in the newspapers, that the shares of the company, not yet allotted, are already being sold in the market (the market being the Stock Exchange) at a premium. This fact conveys to his mind the impression that among men of business—among the keenest critics which the community could supply—the shares are so well thought of, so highly estimated, that they are already worth purchasing at a premium, and, acting on this conviction, he applies for shares and pays the necessary deposit; the shares (perhaps not all that he has applied for) are allotted to him, and his capital is embarked for better or worse in the undertaking.

But the effect of this premium at which the shares (still unallotted) are quoted does not stop here: the premium well established, the public are induced to buy shares in the prospect of a further rise in price, every purchase tends to enhance the price still further, and a daily rise in the premium is the result, until the allotment takes place and the shares begin to be rapidly sold.

Now the misfortune is that this premium at which the shares are announced by the newspapers to have been sold on the market is in many cases fictitious, an artificial price being purposely created in order to allure and deceive the public.

Creation of
premium.

And it may be created in this way. Those whose interest it is to get the shares of the company applied for and taken up, send one, two, or three brokers into the market, who commence bidding for them at a premium. There is no difficulty in finding sellers, for the shares when allotted and issued will be allotted of course at par, and to sell the shares at a premium, being under no obligation to deliver them until after the allotment has taken place, and then

to obtain an allotment of them at par, leaves the premium paid by the buyer in the pocket of the seller.

In this manner two large classes of persons are created whose interest it is to apply for allotments of shares; first, those who look upon the premium as a guarantee that the well informed think highly of the investment, and seek to invest their money accordingly; and next, those who, without any intention of investment, have sold shares at a premium, and then apply for an allotment at par to enable them to deliver what they have sold. It is worth remarking how wholly artificial this dealing is; the first buyers are buying shares not because they want them, not even because they want to sell them again, but because they want people to believe in the bona fides and the success of the undertaking, and thus to attract applications for allotment; the sellers are selling not because they want to get rid of shares which they possess, but because they hope and expect to be able to get an allotment of shares, for the purpose of delivering to the buyer, at a price less than the buyer has agreed to pay for them.

Applications
for allot-
ment.

In this way the list of applications for shares is rapidly filled. Then comes the allotment. Sometimes the shares remain for a while at a premium, but in general the desire to sell preponderates, and the premium rapidly drops and vanishes—the artificial object of inducing applications for shares no longer exists, the promoters are sellers instead of buyers, and the innocent allottee who has embarked in the undertaking on the faith of the good opinion of others, implied, as he thought, in the premium at which the shares were dealt in, finds himself in possession of property which he must either sell at a great loss or keep at perhaps a greater loss still.

Allotment.

That this mode of traffic on the Stock Exchange in its general outline is what happens in the case of worthless companies has been proved; and a few years ago, so universal had the system become, that to a great extent the same thing happened also in the case of companies of a *bonâ fide* character, and presumably sound adventures.

In all cases, in order to get the shares taken up by the public, it seems to have become necessary to "support the issue," as it is called; that is, for the promoters to send brokers into the market to purchase their own shares before allotment at a premium.

"Corner-
ing."

There is another way in which this system of dealing before allotment operates on the Stock Exchange. The promoters of a new company send into the market and buy at a premium a large quantity of their own shares,—a quantity so large perhaps, relatively to the entire share capital, that when the settling day comes after the allotment, and the sellers have to procure the shares to deliver, they find themselves in a difficulty. For the promoters who, it must be remembered, have the allotment entirely in their own hands, have allotted so many shares to themselves or their friends, or to other persons, with an undertaking that they must keep the shares allotted to them and not sell them, or have kept back so large a quantity of shares and not allotted them at all, that they have practically obtained the entire control of the market, and the dealers who have sold in the expectation of having a free market of the entire share capital to buy in for the purpose of delivery, find themselves, as it is called, "cornered," and obliged to pay such prices as the sellers choose to ask to enable them to complete their contracts.

This practice of buying shares or other securities—the buyer having already possessed himself, or in some other manner procured the control of so large a quantity of the thing which the seller has contracted on a future day to deliver, that the seller is “cornered,” and virtually placed at the mercy of the buyer—is not confined to the dealings before allotment in the shares of a new company or loan. But it is obvious that the allotment of the shares of a new company being entirely in the hands of the promoters, gives them, if they choose to purchase their own shares before the allotment, unusual facilities for carrying out such an operation.

Accordingly the rules of the Stock Exchange, as administered by the Committee, provide methods of defeating such combinations. They hear and entertain any objection that any member may make to the settlement being granted; and if it is shown to them that the promoters have by their dealings, coupled with the allotment, practically obtained the command of the market, and placed the dealers or sellers in an unfair position, the settlement is refused.

If false statements are made to the Committee in order to induce them to grant quotation or settlement, the guilty parties may at law be made criminally or civilly liable. Thus, in the Eupion Gas case,¹ the promoters of the company were convicted on a charge of agreeing together by false pretences to deceive the members of the Committee, and to induce them, contrary to the true intent and meaning of the rules, to order a quotation of the shares of the company in the official list, and thereby to induce and persuade divers of the liege

Liability for
false state-
ments.

Criminal.

¹ *R. v. Aspinall*, 1 Q. B. D. 730; 2 Q. B. D. 48.

subjects who should thereafter buy and sell the shares of the said company, to believe that the said company was duly formed and constituted, and had in all respects complied with the rules, so as to entitle them to have their shares quoted.

Civil.

The civil liability of promoters under such circumstances at the suit of any person suffering loss in consequence, would seem to follow directly from the general principle of law that every man is held responsible for the consequences of a false representation made by him to another upon which a third person acts, and so acting is injured or damnified; provided it appear that such false representation was made with the intent that it should be acted upon by such third person in the manner that occasions the injury or loss, and provided also that the injury so sustained is the immediate and not the remote consequence of the representations so made.¹

Thus, in the case of *Bedford v. Bagshaw*² the plaintiff, knowing the rule of the Stock Exchange, and seeing certain shares quoted in the official list, was led to believe that two-thirds of the scrip had been subscribed for, and he had suffered loss by buying some of the shares in the market in that belief. He was held entitled to recover the amount of his loss against one of the directors who had procured the quotation by knowingly misstating to the Committee the amount of scrip subscribed for. The director was considered to have acted fraudulently and to have made representations to the Committee with a view to induce persons to believe in the existence of a certain state of things, and it was held by Pollock, C.B., that all persons buying shares on the

¹ Notes to *Pasley v. Freeman*, 2 Sm. L. C. 64.

² 4 H. & N. 538.

Stock Exchange must be considered as persons to whom it was contemplated that the representation would be made, and that therefore the plaintiff had a good cause of action. This judgment was thoroughly approved of by Page Wood, V.-C., in a subsequent case,¹ but was afterwards in the House of Lords characterized by Lord Chelmsford² as an extraordinary decision. He pointed out that no representation had been made which reached the eyes or ears of the plaintiff, and that it was his knowledge of the rules alone which led him to assume that a representation had been made, and to appropriate it to himself, and, therefore, it could not be taken to be made to anyone who was ignorant of those rules. This certainly qualifies the judgment of Pollock, C.B., very materially, but it is submitted that it does not touch the question of the right of action by a person who is proved to have known that the representation was made and to have acted directly on the faith of it.³

¹ *Barry v. Crosskey*, 2 J. & H. L. 397.
H. 22.

³ See also *Seymour v. Bagshaw*, 18 C. B. 903.

² *Peek v. Gurney*, L. R., 6



APPENDIX.

RULES and REGULATIONS for the conduct of Business on the STOCK EXCHANGE, adopted by the Committee for General Purposes.

COMMITTEE.

1. On the 20th day of March in every year, or if that day should be a Sunday or Bank Holiday, then on the following business day, a ballot by the members shall be held for the appointment of a Committee of thirty members who shall be called the "Committee for General Purposes," and shall hold office for twelve months from the 25th of March next following the date of their election, but shall be re-eligible. Notice of such ballot shall be publicly exhibited in the Stock Exchange during fourteen days previous to the same being held; and a further notice, containing the names of the persons on the existing Committee willing to serve again, and of all new candidates, their proposers and seconders, shall be publicly exhibited in like manner during three business days previously to such ballot being held. The members on the said Committee retiring shall remain in office until the 25th of the same month of March in which their successors shall have been elected, and in case no election shall be made at any such ballot as aforesaid the members retiring shall remain in office until the 25th day of March in the following year, or until a valid election shall have taken place under Clause 92. Four business days' notice previous to any ballot of intention to propose any person not already on the Committee and eligible for re-election must be given to the secretary of the Committee in writing signed by two members, and the ballot shall be by printed lists containing the names of the persons willing to serve again and of all persons so proposed, distinguishing the former from the latter. In case no valid election be made on the day hereinbefore appointed for that object, the Committee may forthwith, or at any time thereafter, prior to the next ordinary yearly ballot, cause a ballot to be held for such election, on a day to be fixed by the Committee for that purpose, and in all respects, as lastly hereinbefore provided; and the Committee to be appointed by such ballot shall remain in office until the 25th day of March then next following. Every ballot for the election of the Committee for General Purposes or for supplying vacancies in the Committee shall be held at the Stock Exchange, and except as specially provided by these presents shall be conducted in accordance with the existing practice and usage in reference to such elections. In

case of dispute as to what such practice and usage has been in any particular, the Committee shall from time to time determine the same by resolution.—*Deed of Settlement*, sect. xii. cl. 90.

2. No person shall be elected to the said Committee for General Purposes who shall not for the space of five years immediately preceding the day of election have been a member, and every person on ceasing to be a member shall *ipso facto* vacate his seat on the Committee.—*Deed of Settlement*, sect. xii. cl. 91.

Every member is entitled to vote although he may not have paid his subscription.

3. Any occasional vacancy in the said Committee for General Purposes shall be filled up by a ballot of members to be held for the purpose on a day to be fixed by the Committee for General Purposes, and of which seven days' previous notice shall be given by the same being publicly exhibited in the Stock Exchange. Similar notice of nomination shall be given as provided by Clause 90. The surviving or continuing members on the Committee, notwithstanding any vacancy in their number, may act until the same shall be filled up.

Any person elected to supply an occasional vacancy in the said Committee shall hold office for the residue of the year in which he shall be elected, and shall then retire with the other members of the said Committee.—*Deed of Settlement*, sect. xii. cls. 92, 93.

4. The said Committee for General Purposes shall meet at such times as they may from time to time appoint, and shall determine their own quorum (the same to be not less than seven members actually present) and mode of procedure.

Until otherwise determined, the quorum of the said Committee shall be seven members personally present.—*Deed of Settlement*, sect. xii. cls. 98, 99.

5. The said Committee for General Purposes shall regulate the transaction of business on the Stock Exchange, and may make rules and regulations not inconsistent with the provisions of these presents respecting the mode of conducting the ballot for the election of the Committee and respecting the admission, expulsion or suspension of members and their clerks, and the mode and conditions in and subject to which the business on the Stock Exchange shall be transacted, and the conduct of the persons transacting the same, and generally for the good order and government of the members of the Stock Exchange, and may from time to time amend, alter or repeal such rules and regulations, or any of them, and may make any new, amended, or additional rules and regulations for the purposes aforesaid.—*Deed of Settlement*, sect. xii. cl. 95.

6. At their first ordinary meeting after the annual election, the Committee shall elect, from amongst themselves, a chairman and deputy-chairman, who shall respectively hold office till the 25th of March next ensuing. In case either appointment shall become vacant, it shall be filled up as soon afterwards as possible. When the chairman and deputy-chairman are absent, the meeting shall appoint a chairman. In all cases when, on a division, the votes are equal, the chairman shall have a second or casting vote.

7. At the first meeting of the Committee, one of the members of the Stock Exchange shall be chosen secretary, who shall hold his office during their pleasure; and three other members shall be

appointed to act as scrutineers at elections, who shall report the result of the ballot to the Committee and to the Stock Exchange.

8. The ordinary meetings of the Committee shall be held every Monday at one o'clock, commencing on the first Monday after each annual election. But a special meeting of the Committee may at any time be called by the chairman or deputy-chairman, or, (in their absence, or in case of their refusal,) by any three members of the Committee. One hour's notice, at least, shall be posted in the Stock Exchange.

9. If a quorum be not assembled within a quarter of an hour after the time appointed for meeting, the chairman, or deputy-chairman, may adjourn such meeting.

10. The business of the Committee shall be divided into two classes, viz., routine, and special; the first, to comprehend the reading of minutes for the purpose of confirmation, or otherwise, the admission of members and clerks, fixing settling days, &c.; the second, the investigation of claims and other matters relating to the interests of the members or of the public.

The printed notices of the meetings of the Committee posted in the house, shall contain the words on "routine" or "special" business.

11. No resolution of the Committee shall be valid, or put in force, until confirmed, unless it relate to the shutting of the house, the admission of members, the re-admission of defaulters, the fixing of ordinary settling days, or the granting or refusing of special settlements, and official quotations. In cases which do not admit of delay, two-thirds of the Committee present must concur in favour of the immediate confirmation of the resolution, and the urgency of the case must be stated on the minutes. In all cases brought under the consideration of the Committee, their decision, when confirmed, is final, and shall be carried out forthwith by every member concerned.

12. Notice shall be given in writing, of any alteration of, or addition to, the rules, and a copy of such alteration of a rule, or proposed new rule, shall be sent to each member of the Committee.

After the reading of the minutes, the consideration of any alteration of a rule, or proposed new rule, shall take precedence of all other business, except the re-admission of defaulters and cases of urgency.

13. All communications to the Committee shall be made in writing; and no anonymous letter shall be acted upon.

14. Members and their clerks shall attend the Committee when required; and shall give such information as may be in their possession relative to any matter under investigation.

15. The Committee may expel any of their own members from the Committee, who may be guilty of improper conduct. The resolution for expulsion must be carried by a majority of two-thirds in a Committee specially summoned for the purpose, and consisting of not less than twelve members, and must be confirmed by a majority of the Committee, at a subsequent meeting, specially summoned.

16. The Committee may expel or suspend any member of the Stock Exchange, who may violate any of the rules or regulations, or fail to comply with any of the Committee's decisions, or who may be guilty of dishonourable or disgraceful conduct. The resolution for expulsion or suspension must be carried by a majority of three-fourths in a Committee specially summoned for the purpose, and consisting of not

less than twelve members, and must be confirmed by a majority of the Committee, at a subsequent meeting, specially summoned.

16a. The Committee may, in their absolute discretion, and in such manner as they may think fit, notify, or cause to be notified to the public that any member has been expelled, or has become a defaulter, or has been suspended, or has ceased to be a member, and the name of such member. No action or other proceeding shall under any circumstances be maintainable by the person referred to in such notification against any person publishing or circulating the same, and this rule shall operate as leave to any person to publish and circulate such notification and be pleadable accordingly.

17. The Committee may dispense with the strict enforcement of any of the regulations; but such power shall only be exercised by a Committee specially convened for that purpose; and consisting of not less than twelve members, three-fourths of whom must concur in the resolution for such dispensation. The resolution must be confirmed by a majority of the Committee, at a subsequent meeting, specially summoned.

ADMISSIONS, RE-ELECTIONS, AND RE-ADMISSIONS.

18. Every member, desirous of being re-elected, shall, on or before the 4th of March in each year, address to the secretary a letter, of the form inserted in the Appendix.

Each individual of a partnership is required to sign a separate letter.

19. The Committee shall, on the first Monday in March, proceed to admit and re-elect such persons, as they shall deem eligible to be members of the Stock Exchange, for one year, commencing on the 25th of March then instant, or last preceding the admission of such subscriber, at the amount fixed by the trustees and managers for such admission.

20. Every applicant for admission, previously to being balloted for, must be recommended by three members of not less than four years standing, who have fulfilled all their engagements, and who are not indemnified. Each recommender must engage to pay five hundred pounds to the creditors of the applicant, in case the latter shall be declared a defaulter within four years from the date of his admission.

If the applicant has been a clerk in the Stock Exchange for four years previously to his application, two recommenders only shall be required, who must each enter into a similar engagement for three hundred pounds.

No member shall be surety for more than three new members at the same time.

21. No foreigner shall be admissible, unless he shall have been naturalized for a period of two years.

22. A notice of each application, with the names of the recommenders, stating whether they are, or expect to be, indemnified, shall be posted in the Stock Exchange, at least eight days before the applicant can be balloted for.

23. Members are required to have such personal knowledge of applicants whom they recommend, and of their past and present circumstances, as shall satisfy the Committee as to their eligibility.

24. Any recommender of a new member, who at the time of such member's admission shall have avowed that he was not, and that he did not expect to be, indemnified, and who shall subsequently receive any indemnity, shall, in the event of the new member failing within the time of his liability, be compelled to pay to the creditors any sum so received, in addition to the amount for which he originally became surety.

25. An applicant may be recommended by a firm, but not by two members of the same firm; nor by two members, one of whom is authorized clerk to the other; nor by a member whose authorized clerk the applicant may be, nor by a member whose sureties are still liable.

26. If a member enter into partnership with, or become authorized clerk to, any one of his sureties, or if any one of his sureties cease to be a member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the Committee will prohibit his entrance to the Stock Exchange.

27. No applicant is admissible, if he be engaged as principal or clerk in any business other than that of the Stock Exchange, or if his wife be engaged in business, or if he be a member of, or subscriber to, any other institution where dealings in stocks or shares are carried on; and if subsequently to his admission he shall render himself subject to either of those objections, he shall thereby cease to be a member.

28. * No applicant for admission, who has been a bankrupt, or has passed through the Insolvent Court, or has compounded with his creditors, shall be eligible, unless he shall have paid 6s. 8d. in the pound; nor then, until two years after he shall have obtained his official discharge, or fulfilled the conditions of his deed of composition, unless he shall have paid his debts in full: and no applicant, having more than once been a bankrupt, or insolvent, or compounded with his creditors, shall be eligible for admission until he shall have paid in full.

29. A member, intending to object to the admission of an applicant, or to the re-election of a member, is required to communicate the grounds of his objection to the Committee by letter, previously to the ballot, or re-election.

30. If any applicant for admission, or re-election, be rejected, he shall not be balloted for again before the 25th of March then next ensuing. Defaulters who have been rejected upon two ballots can only be re-admitted by a majority of three-fourths in a Committee specially summoned, and consisting of not less than twelve members.

31. Any former member, who, not having been a defaulter, bankrupt, or insolvent, shall have discontinued his subscription for one year, must be recommended for re-election by two members, but without security. If he shall have discontinued his subscription for two years, he will be considered a new applicant, and must apply for admission in the usual way.

32. A notice of every defaulter, bankrupt, or insolvent, applying for re-admission, shall, at the discretion of the Committee, be posted

* This rule does not apply to the re-admission of members of the Stock Exchange.

(without recommenders), in the Stock Exchange, at least twenty-one days, and the Committee shall then take the application into consideration, upon the report of the Sub-Committee, appointed according to Rule 163. If, however, the Committee think fit, a defaulter may be re-admitted without the above notice, upon a report of the Sub-Committee and a certificate signed by such a number of the creditors as may be satisfactory to the Committee, that all liabilities have been *bonâ fide* discharged in full. In all such cases, after the defaulter has been re-admitted by ballot it shall be decided by show of hands, whether his name shall be posted in the Stock Exchange as having paid 20s. in the pound; or, whether it shall be placed in one of the two classes mentioned in Rule 164.

33. The re-admission of defaulters shall take precedence of all other business.

34. The chairman of the Committee, in addition to any other questions that may appear to be necessary, shall, to each of the recommenders of an applicant, put the following:—

Has the applicant ever been a bankrupt, or has he ever compounded with his creditors? and if so, within what time, and what amount of dividend has been paid?

Would you take his cheque for three thousand pounds in the ordinary way of business?

Do you consider he may be safely dealt with in securities for the account?

35. The chairman shall require every new applicant to acknowledge his signature to the form of application, and shall ask such questions as may be deemed necessary.

Appendix to Admissions and Re-elections.

1. Form of letter to be signed by persons desirous of becoming members of the Stock Exchange:—

“To the Secretary of the Committee for General Purposes.

SIR,

“You will please to acquaint the Committee for General Purposes that I am desirous of being admitted a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to, the rules and regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. I have read the rules and regulations of the Stock Exchange.

I have read the resolution at the back of the letter.

I am a British subject, and of age.

I am (state whether married or unmarried).

My residence is

My office is

My bankers are

I am not engaged in any business, except such as is transacted at the Stock Exchange, nor am I clerk in any public or private establishment unconnected with the Stock Exchange, nor a member of, or subscriber to, any other institution in which dealings in stocks or shares are carried on.

“I am, sir, yours faithfully,
“_____”

"We recommend Mr. _____ as a fit person to be admitted a member of the Stock Exchange; and in case he shall be publicly declared a defaulter, within four years from the date of his admission, we each of us hereby engage to pay to his creditors, upon application, the sum of five hundred pounds* to be applied in discharge of the said defaulter's debts in the Stock Exchange."

The following rule is to be printed on the back of the letters of application:—

26. If a member enter into partnership with, or become authorized clerk to, any one of his sureties, or if any one of his sureties cease to be a member during his liability, he shall find a new surety for such portion of the time as shall remain unexpired; and until such substitute is provided, the Committee will prohibit his entrance to the Stock Exchange.

The secretary shall send to every member, on his admission, a letter to the following effect:—

"SIR,

"I am directed to inform you, that you are elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18____, upon the terms of, and under and subject in all respects to, the rules and regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. You will be admitted into the house on payment of the entrance fee and subscription to the secretary to the managers.

"I am, sir, &c., &c.,

"_____

"Sec. to the Committee for General Purposes."

2. Form of the letter to be signed by persons desirous of being re-elected members of the Stock Exchange:—

Application for Re-election.

"To the Secretary of the Committee for General Purposes.

"SIR,

"You will please to acquaint the Committee for General Purposes, that I am desirous of being re-elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18____, upon the terms of, and under and subject in all respects to, the rules and regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force.

My residence is

My bankers are

The undernamed will continue to act as my clerk.

I am engaged in partnership with

I am not engaged in any business, except such as is transacted at the Stock Exchange, nor am I clerk in any public or private establish-

* The sureties must state opposite to their signatures whether they are, or are not, or expect to be, indemnified for the security they give, and must attend, together with the person recommended, at one o'clock of the day on which the ballot is to take place; and they are required to have such personal knowledge of the applicant and of his past and present circumstances, as may enable them to give a satisfactory account of the same to the Committee.

ment; nor a member of, or subscriber to, any other institution in which dealings in stocks or shares are carried on.

"I am, sir, your obedient servant,
 _____"

Name of clerk.	Here state whether authorized or not to transact business for money or time; and if the party be a member, it is to be so stated.

The subscription is to be paid to the secretary to the managers, in the committee room, within twenty-one days from the 25th March.

3. The secretary shall furnish each applicant with a book of the rules and regulations, which must be carefully read by him previous to his admission.

The secretary shall send to every member, on his re-election, a letter to the following effect:—

"SIR,
 "I am directed to inform you, that you are elected a member of the Stock Exchange, for the year commencing on the 25th of March, 18 , upon the terms of, and under and subject in all respects to, the rules and regulations of the Stock Exchange, which now are, or hereafter may be, for the time being in force. You will please to pay your subscription to the secretary to the managers.

"I am, sir, &c., &c.,
 _____"

"Sec. to the Committee for General Purposes."

PARTNERSHIPS.

36. In every year, as soon as possible after the general election, a list of partnerships shall be made out by the secretary. In case of a new, or alteration in an old partnership, the same shall be communicated to the Committee; and no partnership shall be considered as altered or dissolved until such communication be made.

All notices relative to partnerships must be signed by the parties, countersigned by the secretary, and posted in the Stock Exchange.

37. The failure of a firm dissolves the partnership, and, should the members of such firm, when re-admitted, desire to renew the partnership, notice thereof must be given to the Committee, in the usual way.

38. No member of the Stock Exchange shall be allowed to enter into partnership with any person who is not a member: nor shall any member form a partnership during the liability of his recommenders, without their written consent; such consent to be communicated to the Committee.

39. Members dealing generally together in any particular stock or shares, and participating in the result, shall be held responsible for the liabilities of each other, not only in the shares or stock in which they are jointly interested, but also in any other description of securi-

ties in which either of them may transact business, unless they forward a written notice to the secretary, specifying the particular shares or stock in which they deal on joint account.

This rule to be applicable also to members allowing others to deal with their shares, stock, or capital, and participating in the result.

Form of notice to be countersigned by the secretary, and posted in the Stock Exchange :—

(Notice.)

“ We, the undersigned, beg to inform the Committee for General Purposes that, from this day until further notice, we hold ourselves jointly responsible to the Stock Exchange for all transactions entered into by either of us in

{ _____

“ We are, sir, &c. _____”

40. The Committee will not allow members or their authorized clerks to act in the double capacity of brokers and dealers; nor will they sanction partnerships between brokers and dealers.

CLERKS.

41. No clerk shall be admitted without the permission of the Committee; nor unless he be seventeen years of age.

No person, who is not eligible for admission as a member, can be admitted as a clerk, with the exception of persons under age, who are ineligible as members on that account only.

No clerk shall be authorized to transact business until he has been two years in the Stock Exchange, and is twenty years of age.

No authorized clerk shall transact business as a dealer in any market other than that in which his employer is engaged.

42. A member, desirous of obtaining the admission of a clerk, or of employing another member as his clerk, shall make application in writing to the Committee, and state whether such clerk is authorized or not authorized to transact business.

When application is made for the admission of a clerk, who has previously been engaged in business out of the Stock Exchange, the name and address of such person, together with the name of the member applying for his admission, shall be posted in the Stock Exchange eight days prior to the application being considered by the Committee.

No clerk shall enter the Stock Exchange until his employer has received from the secretary notice of his admission.

43. A member, applying for the admission of an authorized clerk, must first obtain the consent of his sureties in writing, if the term of their liability be not expired.

44. A member who may part with a clerk, or be desirous of withdrawing from an authorized clerk the permission to transact business on his account, shall give notice in writing to the secretary, who shall forthwith communicate the same to the Stock Exchange, in the usual manner.

45. A list of authorized clerks (distinguishing those who are also members) and the names of their employers, shall be posted in the

Stock Exchange, and the authority shall be considered to continue until revoked by letter to the Committee.

46. A member authorizing a clerk to transact business shall not be held answerable for money borrowed by the clerk, without security, unless he shall have given special authority for that purpose.

47. A member employed as clerk, whether authorized or unauthorized, shall not make any bargain in his own name.

48. No clerk shall be allowed to apply for an allotment in loans or shares, without the sanction of his employer, who shall be responsible for the payment of the deposit on the shares or stock so applied for.

49. Clerks of defaulters are excluded from the Stock Exchange. Clerks of deceased members may, by permission of two members of the Committee, attend to adjust unsettled accounts.

GENERAL RULES APPLICABLE TO STOCK EXCHANGE TRANSACTIONS.

50. The Stock Exchange does not recognize in its dealings any other parties than its own members: every bargain therefore, whether for account of the member effecting it, or for account of a principal, must be fulfilled according to the rules, regulations, and usages of the Stock Exchange.

51. No member shall attempt to enforce by law a claim arising out of Stock Exchange transactions against a member or defaulter, or against the principal of a member or defaulter, without the consent of such member, of the creditors of the defaulter, or of the Committee.

The Committee have power to intervene in cases where the principal of a member shall attempt to enforce by law a claim which is not in accordance with the rules, regulations, and usages of the Stock Exchange, and will deal with such cases as the circumstances may require.

52. If a non-member shall make any complaint against a member, the Committee shall in the first place consider whether the complaint is fitting for their adjudication, and in the event of the Committee deciding in the affirmative, the non-member shall, previously to the case being heard by the Committee, sign a consent in writing as follows:—

“ To the Committee for General Purposes of the Stock Exchange, London ;

“ In the matter of a complaint between and

“ GENTLEMEN,

*“ I do hereby consent to refer this matter to you, and I undertake to be bound by the said reference, and to abide by and forthwith to carry into effect your award, resolution, or decision in this matter, in the same manner as if I were a member of the Stock Exchange ; and I further undertake not to institute, prosecute, or cause, or procure to be instituted, or prosecuted, or take any part in proceedings, either civil or criminal, in respect of the case submitted. And I consent that the Committee may proceed in accordance with their ordinary rules of procedure, and I undertake to be bound by the same. Also that the Committee may proceed *ex parte* after notice, and that it shall be no objection that the members of the Committee present vary during the inquiry, or that any of them may not have*

heard the whole of the evidence, and any award or resolution of the Committee, signed by the chairman for the time being, shall be conclusive that the same was duly made or passed, and that the reference was conducted in accordance with the practice of the Committee. And I hereby consent that such award or resolution shall be deemed to be an award under the Common Law Procedure Act, 1854, and be enforceable accordingly, and that the same may be made a rule of the Queen's Bench, or of either of the other Common Law Divisions of the High Court of Justice.

"I remain,
"Gentlemen,
"____,"

53. If a member shall do a private bargain, either for money or time, with an individual member of a firm in the Stock Exchange, such bargain being concealed from the firm, both members shall be expelled.

54. If any member or authorized clerk shall do a bargain, either for money or time, with an authorized or unauthorized clerk, for account of such clerk, they shall be liable to expulsion.

55. The Committee particularly caution members against transacting speculative business for clerks in public or private establishments, without the knowledge of their employers.

Members disregarding this caution are liable to be dealt with in such manner as the Committee may deem advisable.

56. No application which has for its object to annul any bargain in the Stock Exchange shall be entertained by the Committee, unless upon a specific allegation of fraud or wilful misrepresentation.

57. The Committee will not recognize any dealing in letters of allotment, either of loans or shares in new companies.

58. A member applying for shares or stock of loans or public companies, and neglecting to pay the deposit on the same, shall be considered to have violated a contract, and shall be compelled to fulfil his engagement.

59. The Committee will not recognize new bonds, stock, or other securities, issued by any foreign government that has violated the conditions of any previous public loan raised in this country, unless it shall appear to the Committee that a settlement of existing claims has been assented to by the general body of bondholders.

Companies issuing such securities will be liable to be excluded from the official list.

60. The Committee will not, after the restoration of peace, recognize, or allow the quotation of, any loan raised by a power whilst at war with Great Britain.

61. No member shall enter into bargains in prospective dividends on shares or stock of railway or other companies.

62. All disputes between members, not affecting the general interests of the Stock Exchange, shall be referred to arbitration; and the Committee will not take into consideration such disputes, unless arbitrators cannot be found, or are unable to come to a decision.

63. No member shall be obliged to take a reference for payment to a non-member; nor shall he be obliged to pay a non-member for securities bought in the Stock Exchange.

64. Cheques must be passed through the clearing house, unless the

drawer consent to their being otherwise presented. But if a member require bank notes in payment for securities sold, without having made such stipulation at the time of making the bargain, he must give notice to that effect before half-past eleven o'clock on the day of delivery, and payment shall be made upon delivery of the securities, or the bank receipt.

65. A seller, having transferred or delivered stock or other securities, has a right to demand payment from the member who passed him the ticket; and in case the seller apply to the issuer of the ticket, and fail to obtain payment, or receive a cheque which is dishonoured, the member from whom he received the ticket shall make immediate payment.

66. A seller may require payment of the difference between the price marked on the ticket, and the making-up price of the day on which the ticket is tendered, but if such making-up price be above the price of sale, he shall only be entitled to claim the difference up to the price of sale.

67. In cases of loans, the lender is not entitled to place beyond his control shares or stock received as security for money advanced; and he may, after reasonable notice, and upon payment of the principal together with interest up to the time for which the loan was originally made, be required to return the identical bonds, or to re-transfer the shares or stock given as security for such loan. But this liability does not apply to a member who has taken in shares or stock upon continuation.

All continuations shall be effected at the making-up price, or at the then existing market price.

68. Buying-in or selling-out must be effected publicly by the secretary to the Committee for General Purposes, or by the clerks of the house in their respective markets, who shall trace the transaction to the responsible party, and claim the difference thereon.

69. Bonds, shares, or other securities, shall not be bought in, while they are known to be out of the control of the seller for the payment of calls, or the receipt of interest, dividends or bonus; and the Committee, on being applied to, will fix a day on which they may be bought in.

70. In the settlement of all bargains, dividends are to be accounted for at the net amount receivable after deduction of Income Tax.

In the case of dividends payable only abroad, the secretary to the share and loan department shall fix a price for the coupons in sterling money, which shall be posted in the Stock Exchange, and at which the dividends shall be accounted for.

Securities to bearer are not deliverable on the settling-day without the current coupon.

Securities to bearer, with coupon payable on the settling-day, shall be delivered ex coupon.

When the dividend is payable after the settling-day, outstanding bargains in securities to bearer shall be settled with the current coupon, otherwise the buyer shall have the right to demand the market value of the coupon, which, in case of dispute, shall be fixed by the secretary to the share and loan department.

71. All optional bargains for the settlement shall be declared at a quarter before three o'clock on the day before the ticket-day.

72. The hours of business in the Stock Exchange are from eleven until three o'clock. On Saturdays business will close at one o'clock.

When the ticket-day is fixed for a Saturday, the house will be kept open until three o'clock, for the purpose of the settlement only, the regulations for which shall be the same as on ordinary ticket-days.

The Stock Exchange will be closed on the following days, viz.—1st January, Easter Monday, 1st May, Whit Monday, the first Monday in August, 1st November, 26th December, unless specially ordered otherwise by the Committee.

When either the 1st January, 1st May, 1st November, or 26th December falls on a Sunday, the house will be closed on the day following.

N.B. The Committee strongly recommend that all bargains be checked on the following day.

RULES APPLICABLE TO ENGLISH AND INDIA STOCKS, &c.

73. All bargains, when no time is specified, shall be considered as made for the existing account.

74. The Committee will not recognize any bargain for a future account, if it shall have been effected more than eight days previously to the close of the pending account.

75. An offer to buy or sell a sum of stock, at a price named, is binding as to any part thereof; and an offer to buy or sell stock, when no amount is named, is binding to the amount of 1,000*l.* stock.

76. If the seller of stock shall not receive from the purchaser a transfer-ticket by ten minutes before one o'clock, he may demand two shillings and sixpence for each transfer-fee, which may be paid for the actual transfer of such stock. On a settling-day, if the transfer-ticket is not delivered by a quarter before one o'clock, the seller may claim of the purchaser two shillings and sixpence for every 1,000*l.* stock; and if he shall not receive a transfer-ticket before half-past one o'clock, on the day it was contracted to deliver the said stock, he may sell out the same, and claim of the person who held the ticket at half-past one o'clock any loss or charge incurred. On Saturdays stock may be sold out at a quarter to one o'clock.

77. Stock bought for a specified day, and not then delivered, may be bought in on the following day at eleven o'clock, and the member causing the default shall pay any loss incurred, and also one-eighth per cent. for the non-delivery of the stock. This fine shall attach to all stock not delivered on the day for which it was bought, whether it shall have been bought in or not.

78. Transfer receipts for stock bought for a specified day, must be delivered by a quarter before four o'clock, or by half-past one o'clock on Saturdays.

Omnium or scrip, not paid in full, must be delivered before two o'clock, or by one o'clock on Saturdays.

79. When stock is borrowed without any stipulation as to its return, the borrower or lender may be called upon to deliver or take it on the following day, whether a regular transfer-day or not.

80. In cases of loans on the deposit of stock, when the striking of the balances for dividend takes place before repayment of the loan, the

the lender shall allow the dividend, deducting interest thereon till the day of payment of, and at the same rate as, the loan.

81. Purchasers of Bank or East India Company's stock may require, at the seller's expense, as many transfers as there are even thousand pounds stock in the sum bargained for.

82. The clerk of the house shall fix the making-up prices, by taking the average price between eleven and one o'clock on each of the two days preceeding the account, and between eleven and a quarter before one o'clock on the settling day; and no making-up shall be binding unless at such fixed prices.

RULES APPLICABLE TO SECURITIES OF COMPANIES DELIVERABLE BY DEED OF TRANSFER.

83. Bargains in shares or stock, when no time is specified, and bargains made before twelve o'clock on ticket days, shall be considered to be made for the existing account.

84. The Committee will not recognize any bargain in shares or stock effected for a period beyond the ensuing two accounts.

85. An offer to buy or sell an amount of shares or stock at a price named, is binding as to any part thereof, that may be a marketable quantity; and an offer to buy or sell shares or stock, when no amount is named, is binding to the amount of ten shares, if in value under 500*l.*, or a number not exceeding in value that sum, or to the amount of 1,000*l.* stock.

86. The seller of shares or stock is responsible for the genuineness and regularity of all documents delivered, and for such dividends as may be received, until reasonable time has been allowed to the transferee to execute and duly lodge such documents for verification and registration. When an official certificate of registration of such shares or stock has been issued, the Committee will not (unless bad faith is alleged against the seller) take cognizance of any subsequent dispute as to title, until the legal issue has been decided, the reasonable expenses of which legal proceedings shall be borne by the seller.

87. The Committee will not (except under special circumstances) interfere in any question arising from the delivery of shares, stock, bonds, or debentures by transfer in blank.

88. The buyer who takes up securities deliverable by deed of transfer shall, before twelve o'clock on the ticket day, issue a ticket with his own name as payer of the purchase-money, which ticket shall contain the amount and denomination of the stock or security to be transferred; the name, address, and description of the transferee in full; the price, the date, and the name of the member to whom the ticket is issued. Each intermediate seller, in succession, to whom such ticket shall be passed, shall endorse thereon the name of his seller.

A member receiving a ticket from the issuer after twelve o'clock on the ticket day, shall note the same on the back of the ticket; it is also required that the member who first receives a ticket—

After one o'clock,
After half-past one o'clock,
After two o'clock, or
After half-past two o'clock,

draw a line noting such times; and members receiving tickets

after three o'clock, or at any time on any subsequent day, shall mark the exact time at which they are received.

Members omitting to note the times thus fixed may become liable for losses occasioned by selling out in case undue delay is proved under the provisions of Rule 97.

A member splitting a ticket shall pay any increased expense caused by such splitting, and shall retain the original ticket. Split tickets must bear the name of the issuer of the original ticket.

A member failing to keep the original ticket will be required to trace it in case of selling out.

On ticket days the passing of tickets shall commence at ten o'clock. Tickets may be left at the office of the seller up to half-past one o'clock on ticket days.

Tickets may be issued and passed on the day before the ticket day, but the buying-in upon tickets so issued shall not be allowed until the eleventh day after the ticket day.

89. When shares have been converted into consolidated stock, and are so quoted in the official list, buyers are required to pass tickets for stock, and not for shares.

90. A member not refusing an antedated ticket, when tendered as such, takes it with all its liabilities; but if it be passed as an ordinary ticket, the liabilities remain with the member putting such ticket again into circulation; and any member holding an undated ticket shall not be liable for any loss arising from the shares or stock having been bought in, unless such ticket has been seven days in his possession.

91. A member who makes an alteration in, or improperly detains a ticket, shall make good any loss that may occur thereby.

92. The deliverer shall cause the shares or stock to be transferred at the price marked upon the ticket; but no member shall be compelled to take a ticket at a price not quoted in the official list during the account, unless the bargain represented by such ticket shall have been made within the two preceding accounts.

93. The deliverer may, previously to delivery, pay any call made on registered shares, although not due, and claim the amount of the issuer of the ticket.

94. The buyer of shares or stock shall pay the *ad valorem* duty and registration fee, and shall state on the ticket the amounts in which he may desire to have the shares or stock transferred, (provided no such amounts require a higher stamp than 9*l*. 15*s*.).

In cases of loans the borrower shall pay the nominal consideration stamps of ten shillings, the registration fees, and the mortgage stamp.

95. The buyer shall, in the event of his ticket being split, pay for any portion of shares or stock which may be presented, provided the number be not less than ten shares, or the value less than 200*l*.

96. The buyer of shares or stock may refuse to pay for a transfer deed unaccompanied by coupons or certificates, unless it be officially certified thereon that the coupons or certificates are at the office of the company. But if the transfer deed be perfect in all other respects, the shares or stock must not be bought in until reasonable time has been allowed to the seller to obtain the verification required. If the seller have a larger coupon than the amount of stock conveyed, or only one coupon representing stock conveyed by two or more transfer deeds,

the coupon may be deposited with the secretary of the share and loan department of the Stock Exchange, who shall forward it to the office of the company, and certify to that effect on the transfer deeds, which shall then be a valid delivery. No person is to look to the managers or Committee of the Stock Exchange, as being liable for the due or accurate performance of those duties, the managers and Committee holding themselves, and being held, entirely irresponsible in respect of the execution, or of any mis-execution, or non-execution, of the duties in question.

97. The deliverer of shares or stock who shall not receive a ticket by half-past two o'clock on the ticket-day, may sell out such securities up to three o'clock. If the ticket shall not have been regularly issued before twelve o'clock, the issuer thereof shall be responsible for any loss occasioned by such selling out. Should, however, the ticket have been regularly put into circulation, the holder thereof at two o'clock shall be responsible for any selling out on the ticket-day; but if the selling out take place on any subsequent day, the holder of the ticket at three o'clock on the previous day, or at one o'clock on Saturdays, shall be liable, unless he can prove undue delay in passing the ticket.

Should the deliverer allow two clear days to elapse without availing himself of his right to sell out, his buyer shall be released from all loss in cases where the ticket has not been passed in consequence of the public declaration of any member as a defaulter. If a seller does not deliver shares or stock within thirteen clear days, the intermediate buyer from whom he received the ticket shall be released, and the issuer thereof shall alone remain responsible for the payment of the purchase-money.

98. When shares or stock are sold out, if a ticket be not given within half an hour after the time of sale, the transfer may be made into the name of the buyer.

99. If shares or stock are not delivered within ten days the issuer of the ticket may buy in the same against the seller at, or after, twelve o'clock on the eleventh day after the date of the ticket, or on any subsequent day.

One hour's public notice of such buying-in must be posted in the Stock Exchange, and the purchase must be made or attempted within half an hour after the expiration of the time fixed. The name into which the shares or stock are to be transferred must be stated in the order to buy in. The loss occasioned by such buying-in shall be borne by the ultimate seller, unless he can prove that there has been undue delay in the passing of the ticket on the part of any member, who shall in that case be liable.

Shares or stock thus bought in and not delivered by one o'clock on the following day, or by twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the member causing such re-purchase.

100. The issuer of a ticket who shall allow thirteen clear days from the date of his ticket to elapse without buying-in or attempting to buy in shares or stock, shall release his seller from all liability in respect of the non-delivery of the securities, unless he shall have waived his right to buy in at the request, or with the consent of his

seller; and the holder of the ticket shall alone remain responsible to such issuer for the delivery of the securities.

101. The buyer is entitled to new shares or stock issued in right of old, provided that, within reasonable time, he specially claim the same, in writing, from the seller. Claims should be entered as bargains, and as such be checked in the usual manner.

When practicable, claims are required to be settled by letters of renunciation, but if not practicable, and there be sufficient time for registration, the seller may, after due notice, require the buyer to complete the bargain in old shares or stock.

If the new shares or stock cannot be obtained by letters of renunciation, or by the transfer of the old, the Committee will fix a price at which the same shall be temporarily settled, and which amount may be deducted by the buyer from the purchase-money of the old shares or stock, until the special settlement.

The Committee will not entertain any dispute relating to unchecked claims, unless brought before them within ten days after the special settling-day.

102. On the day before the ticket-day, and on the ticket-day, the clerk of the house shall, at twelve o'clock, fix the making-up prices by taking the then actual market prices, and no making-up shall be binding unless at such fixed prices. In case of dispute as to the making-up price, or of any omission in fixing the same, the clerk of the house shall act upon the decision of two members of the Committee.

103. On ticket-days all unsettled bargains shall be brought down and temporarily adjusted at the making-up price of the day, the difference thereon being paid on each subsequent settling-day until the closing of the transaction; and bargains thus temporarily adjusted, unless settled within the three following accounts, will be considered as absolutely made-up and closed, so far as all intermediate persons are concerned.

104. No member shall be required to pay for shares or stock presented after half-past two o'clock; or after one o'clock on Saturdays.

RULES APPLICABLE TO SECURITIES TO BEARER.

105. Bargains, when no time is specified, shall be considered as made for the existing account, but those made on a settling-day shall, unless otherwise expressed, be for the ensuing account.

106. The Committee will not recognise any bargain effected for a period beyond the end of the ensuing two accounts.

107. An offer to buy or sell a sum of stock, at a price named, is binding as to any part thereof, not less than the under-mentioned sums, and divisible by the same: viz.,—£1,000 stock or scrip; fs. 750 French rentes; 10 shares.

108. No member shall be required to accept the delivery of a certificate of American shares of a larger amount than 10 shares of \$100 each nominal capital, or 20 shares of \$50 each, nor an American bond of a larger amount than \$1,000 except upon special contract.

109. The seller of securities for a particular day, which the buyer is not prepared to pay for by half-past two o'clock on that day (or

half-past twelve o'clock on Saturdays), may sell out the same, and claim of the buyer any loss incurred.

110. On the ticket-day between ten and three o'clock, tickets shall be passed without any price thereon, and the accounts made up therewith are to be settled at the making-up price of the day.

Tickets must bear distinctive numbers, and be for the following amounts, viz. :—

£1,000 stock, or multiples of £1,000 up to £5,000.

£1,000 Italian stock, or multiples thereof up to £5,000; also £800, or multiples thereof up to £4,800.

\$5,000 American stocks, or multiples thereof, up to \$25,000.

Fcs. 1,500 French 3 per cent. rentes, or multiples thereof, up to fcs. 6,000.

10 shares, or multiples thereof, up to 100.

Tickets for £500 stock may be passed for bargains, or balances of that amount.

Smaller amounts must be settled without tickets.

Tickets shall not be issued later than two o'clock on the ticket-day.

Tickets shall not be split.

Every member is required to endorse on the ticket the name of the member to whom it is passed.

Tickets may be left at the office of the seller up to half-past two o'clock on ticket-days.

On the settling-day, and on the day after the settling-day, the delivery of securities shall commence at ten o'clock.

Sellers shall accept tickets, and if they elect to settle with their immediate buyers under the provisions of Rule 65, they shall deliver their securities before half-past twelve o'clock.

The holder of tickets may deliver securities up to half-past one o'clock on settling-days.

A member electing to take securities from his immediate seller must give notice thereof before twelve o'clock on the ticket-day, in which case he shall be required to pay up to two o'clock on the settling day. Members neglecting to give such notice shall be required to pay up to half-past two o'clock.

Buyers shall pay for such portion of securities as may be delivered within the prescribed times.

111. A member shall be required to pay for securities presented until half-past two o'clock on any day other than settling-days. On Saturdays he shall not be required to pay for securities after one o'clock.

112. Securities bought for any period, except the settling-day, which shall not be delivered by half-past two o'clock, or by half-past twelve o'clock on Saturdays, may be bought in on the same, or any subsequent day, and any loss occasioned by such re-purchase shall be borne by the seller.

But securities bought for the settling-day, and not delivered by half-past two o'clock, may be bought in on the following, or any subsequent day, after one hour's notice, to be posted in the foreign market, announcing the intended purchase. The buying-in not to take place before two o'clock, nor before half-past twelve o'clock on Saturdays, in which case the loss shall be borne by the member who shall not have delivered the shares or stock by half-past two o'clock on the previous day, or by one o'clock on Saturdays.

Stock thus bought in, and not delivered by one o'clock on the following day, or by twelve o'clock on Saturdays, may be re-purchased for immediate delivery without further notice, and any loss shall be paid by the members causing such re-purchase.

A member neglecting to take the numbers of securities delivered after time, shall be required to trace out the member responsible for the loss.

113. A member who shall allow two clear days to elapse without availing himself of his right to buy in, or without attempting to buy in securities, releases the seller from any loss in consequence of the public declaration of any member as a defaulter, unless he shall have waived such right at the request, or with the consent, of the seller.

114. The clerk of the house shall, at twelve o'clock on each of the two days preceding each settling, fix the making-up prices of all securities by taking the then actual market prices; and no making-up shall be binding unless at such fixed prices.

115. On settling-days, all unsettled bargains shall be brought down and temporarily adjusted, at prices to be fixed by the clerk of the house at half-past two o'clock, and the differences shall be paid in the usual manner.

116. Bargains in exchequer bills are for bills not filled up to order.

117. Bargains in French rentes, unless otherwise specified, shall be settled in certificates to bearer, and at a fixed exchange of 25 fcs. per pound sterling.

118. Foreign coupons sold at the exchange of the day, and not paid, are returnable with all reasonable expenses.

119. The buyer of bonds or other securities subject to periodical drawing, shall not be entitled to claim delivery thereof previous to the day for which they were bought.

Bargains must be settled in securities which have not been officially notified as drawn. In case of the erroneous delivery of any drawn securities, the buyer (on receipt of undrawn securities, and on allowance being made for any drawing or dividend of which he may have lost the benefit) shall deliver such securities back to the person who held them at the time of the official notification of the drawing, or shall pay to him any proceeds received from such drawing, provided the said securities or the proceeds thereof be traced to, and remain in the possession, and under the control, of such buyer, all intermediate members being released from liability.

No claim in respect of the erroneous delivery of drawn securities will be entertained by the Committee, unless made within nine calendar months.

120. The buyer is entitled to new securities issued in right of old, provided that within reasonable time he specially claim the same in writing from the seller, who may after due notice require the buyer to complete the bargain in old securities. Claims should be entered as bargains, and as such be checked in the usual manner.

The Committee will fix a price for the new securities, which may be deducted by the buyer from the purchase-money of the old securities, until the special settlement.

The Committee will not entertain any dispute relating to unchecked claims, unless brought before them within ten days after the special settling-day.

121. The deliverer is responsible for the genuineness of securities delivered, and in case of his death, failure, or retirement from the Stock Exchange, such responsibility shall attach to each member in succession, through whose hands the ticket for such securities shall have passed.

122. Every bond or scrip share is to be considered perfect, unless it be much torn or damaged, or a material part of the wording be obliterated. The Committee will not take cognizance of any complaint in respect of bonds or shares alleged to have been delivered in a damaged condition, or deficient in, or with irregular, coupons, should such bonds or shares be detained by the buyer more than eight days after the delivery, unless it can be proved that the member passing them was aware of their being imperfect.

123. Bonds and debentures of railways in Great Britain, Ireland, and the East Indies, shall be dealt in so that the accrued interest, up to the day for which the bargain was done, be paid by the buyer: but bargains in bonds and debentures of colonial and foreign railways shall include the accrued interest in the price.

SPECIAL SETTLING DAYS AND OFFICIAL QUOTATION OF NEW LOANS, SHARES, AND STOCKS.

124. Bargains in the scrip of a new loan, or the shares of a new company, are contingent on the appointment of a special settling-day.

125. The Committee will appoint a special settling-day for transactions in the scrip of a new loan, provided the requisite documents are in due order, that the issue is not in contravention of Rules 59 and 60, and that no allegation of fraud is substantiated.

The application for a special settling-day for bargains in foreign, colonial, or other loans, must be laid before the secretary of the share and loan department, who shall give three clear days' public notice previously to its being considered by the Committee.

The application must be accompanied by the prospectus, by notarial copies or translations, or other satisfactory evidence of the powers under which the loan is contracted, and by a certificate verified by the statutory declaration of the contractors or agents of the amount allotted to the public, and that the scrip or bonds are ready for delivery.

The Committee will order the quotation of the scrip and bonds of a foreign, colonial, or other loan, the dividends of which are payable in this country, provided such loan has been publicly negotiated by tender, contract, or otherwise, and provided the bonds specify the amount and conditions of the loan, the powers under which it has been contracted, and the numbers and denominations of the bonds issued, and bear the autographic signature of the contractor or properly authorized agent.

Bonds will not be admitted to quotation until they have been approved by the Committee.

Bonds, the dividends of which are payable abroad, may be quoted upon satisfactory proof of the amount created, and of the official quotation in the country where issued.

126. Bargains in foreign loans, which are officially quoted in the country to which they belong, shall be for the ordinary settlements.

127. The Committee will appoint a special settling-day for transac-

tions in the shares of a new company, provided that no allegation of fraud be substantiated; that there has been no misrepresentation or suppression of material facts; that sufficient scrip or shares are ready for delivery, and that no impediment exists to the settlement of the account.

128. The secretary to the share and loan department shall give one week's notice to the Stock Exchange of any application for a special settling-day for transactions in the shares of a new company, previously to such application being submitted to the Committee, and shall require the production of the following documents: viz.,

The prospectus, the act of parliament, the articles of association, or a certificate that the company is constituted upon the cost-book system, under the Stannary Laws.

The original applications for shares, the allotment book, signed by the chairman and secretary to the company, and a certificate verified by the statutory declaration of the chairman and the secretary, stating the number of shares applied for and unconditionally allotted to the public, the amount of deposits paid thereon, and that such deposits are absolutely free from any lien.

The bankers' pass book, and a certificate from the bankers, stating the amount of deposits received.

129. The Committee will order the quotation of a new company in the official list, provided that the company is of *bona fide* character, and of sufficient magnitude and importance; that the requirements of Rule 128 have been complied with, and that the prospectus has been publicly advertized, and agrees substantially with the act of parliament, or the articles of association, and in the case of limited companies contains the memorandum of association; that it provides for the issue of not less than one half of the nominal capital, and for the payment of ten per cent. upon the amount subscribed, and sets forth the arrangements for raising the capital, whether by shares fully or partly paid up, with the amounts of each respectively, and also states the amount paid, or to be paid, in money or otherwise, to concessionnaires, owners of property, or others on the formation of the company, or to contractors for works to be executed, and the number of shares, if any, proposed to be conditionally allotted;

That two-thirds of the whole nominal capital proposed to be issued have been applied for and unconditionally allotted to the public (shares reserved or granted in lieu of money payments to concessionnaires, owners of property or others, not being considered to form part of such public allotment), that the articles of association restrain the directors from employing the funds of the company in the purchase of its own shares, and that a member of the Stock Exchange is authorized by the registrar to give full information as to the formation of the undertaking, and be able to furnish the Committee with all particulars they may require.

In cases where fully paid shares have been granted in lieu of money payments, an official certificate will be required that the contract providing for the issue of such shares has been filed with the registrar of joint stock companies, as prescribed by the 25th section of the Companies' Amendment Act, 1867.

Foreign companies partly subscribed for and allotted in this country, shall not, unless under special circumstances, be allowed a quotation

in the official list, until they have been officially quoted in the country to which they belong.

130. A company issuing, or promising to issue, new shares within twelve months after the first settling day appointed by the committee, unless under special circumstances, shall be liable to exclusion from the official list.

131. The Committee particularly caution brokers against giving the sanction of their names to the bringing out of any company without due inquiry as to the *bona fides* of its objects, the character of its promoters, directors and concessionnaires, and of the other persons connected therewith. Members disregarding this caution are liable to be dealt with in such manner as the case may require.

ORDINARY SETTLEMENT DAYS AND OFFICIAL QUOTATION OF PRICES.

132. The Committee shall fix the settling-day for English stock, at least eight days previous to the settlement of the pending account, and at their first meeting in each month they shall fix the ticket-days and settling-days for foreign stock, shares, &c., for the succeeding month.

The secretary shall give notice of the days thus appointed.

133. The settling-day in English omnium and scrip shall be two days prior to the respective days of payment of each of the several instalments, unless the payment falls on a Tuesday, in which case the settling-day shall be on the previous Monday.

In case the payment of an instalment on foreign or other scrip falls on a settling-day, the settlement of such scrip shall take place the day previous to the payment.

134. A list of prices of English and foreign stocks, shares, and other securities, permitted to be quoted, shall be published under the authority of the Committee; and no list shall be published and sold by a member without the sanction of the Committee.

135. No price of English or foreign stock, shares, or other securities, shall be inserted in the official list, unless the bargain shall have been made in the Stock Exchange, between members, at the market price; nor on the authority of one of them, if he refuse, when required by a member of the Committee, to give up the name of the member with whom he has dealt.

136. The prices of bargains done in the following amounts of stock may be quoted in the official list; viz.,

Government perpetual annuities, £500 stock.

Omnium or scrip, £1,000.

Annuities for a term of years, £20 per annum.

Bank or India stock, £200.

Exchequer bills and India bonds, £1,000; under that amount to be quoted separately, whether of £500, or any smaller amount.

Foreign stock or securities, £1,000 stock or scrip; or an amount representing about £500 money. Five shares in any company, or any number of shares or amount of stock being in value above £200.

137. Bargains in English stock for the next transfer day, or in foreign or other stocks for the following day, may be marked in the official list of money prices.

Bargains in all stocks made during the shutting, for the opening, may be quoted in the official list.

Bargains in foreign bonds may be quoted in the official list, with or without overdue coupons.

Omnium may be quoted for the issue of the receipts, for money, and for the next succeeding payment.

138. All dealings in English stock (except bank stock), and in India 4 and 5 per cents., for any day subsequent to the striking of the balances of such stocks for dividend, shall be ex dividend, and quoted accordingly.

139. Bargains in transferable shares or stock shall be quoted ex interest from the beginning of the account in which the interest may become payable; and ex dividend from the beginning of the account following that in which the dividend may have been declared, provided the dividend be made payable to the holders then registered; but in case of a subsequent shutting of a company's books for payment of the dividend, then, from the beginning of the account following that in which such shutting occurs.

Bargains in securities to bearer shall be quoted ex dividend on the day when the dividend is payable.

Shares in foreign railways shall, when practicable, be quoted ex dividend, or ex interest, at a period in accordance with the practice of foreign bourses.

140. Bargains should be quoted in the order in which they are made; but the clerks of the house may, with the concurrence of a member of the Committee, quote omitted bargains, if notified before one o'clock, in the order in which they occurred, upon a written application from the buyer and the seller, stating the amount, the time when, and the price at which, such bargains were made; and such application shall be filed, and laid before the Committee at their next meeting. The above regulation applies likewise to all bargains done between one and three o'clock.

141. A price inserted in the official list shall not be expunged, without the authority of the chairman, deputy-chairman, or two members of the Committee.

FAILURES.

142. A member unable to fulfil his engagements shall be publicly declared a defaulter by direction of the chairman, deputy-chairman, or any two members of the Committee.

143. A member declared a defaulter in the Stock Exchange, or a member who may become bankrupt or insolvent, although he may not be at the same time a defaulter in the Stock Exchange, ceases to be a member.

144. When a member shall give private intimation to his creditors of his inability to fulfil his engagements, the creditors shall not make any compromise with such defaulter, but shall immediately communicate with the chairman, deputy-chairman, or two members of the Committee, in order that the member in default may be immediately declared; and in case the Committee shall obtain knowledge of any private failure, the name of the defaulter shall be publicly declared.

145. A member conniving at a private failure, by accepting less than the full amount of his debt, shall be liable to refund any money or securities received from such defaulter, provided he shall be publicly declared within two years from the time of such compromise, the property so refunded being applied to liquidate the claims of the sub-

sequent public creditors. Any arrangement for settlement of claims, in lieu of *bonâ fide* money payment, on the day when such claims become due, shall be considered as a compromise, subject to the provisions of this rule.

146. A member who shall have received a difference on an account, prior to the regular day for settling the same, or who shall have received a consideration for any prospective advantage, whether by a direct payment of money, or by the purchase or sale of stock at a price either above or below the market price at the time the bargain was contracted, or by any other means, prior to the day for settling the transaction for which the consideration was received, shall (in case of the failure of the member from whom he received such difference or consideration) refund the same for the general benefit of the creditors; and any member who shall have, under the circumstances above stated, paid or given such difference or consideration, shall again pay the same to the creditors; so that, in each case, all persons may stand in the same situation with respect to the creditors, as if no such prior settlement or other arrangement had taken place.

147. A creditor receiving, under any circumstances, a larger proportion of differences on a defaulter's estate than that to which each of the creditors is entitled, shall refund such portion as shall reduce his dividend to an equality with the others.

148. Creditors for differences shall have a prior claim on all differences received by, or due to, a defaulter's estate.

149. Members not receiving due payment for securities delivered on the day of default, are entitled, so far as regards the value thereof, at the average price on the day of delivery, to be paid *pro ratâ*, and preferentially, out of assets resulting in any manner from such securities, or derived from the defaulter's own resources; and, should these prove insufficient, they shall, as to the balance of such claims, participate with other creditors in any surety-money of the defaulter.

150. In the case of loans of money made upon securities valued at less than the market-price, the lender shall realize his securities within three clear days, (unless the creditors consent to a longer delay,) or take them at a price to be fixed by the official assignees, with appeal to any two members of the Committee. Should the security be insufficient, the difference may be proved against the defaulter's estate.

151. No loan without security shall be admitted as a claim on the differences of a defaulter's estate; nor shall any such loan, when of longer duration than two business days, be admitted as a claim on any other of his assets; and should any unsecured creditor receive payment of his loan from a member on the day of his default, such payment being made out of assets not belonging to the defaulter previously to that day, he shall refund the amount so received for the benefit of the defaulter's estate.

152. Differences allowed to remain unpaid for more than two business days beyond the day on which they become due, cannot be proved against a defaulter's estate, or set off against any difference due to a defaulter at the time of his failure. Differences overdue and paid previous to the day of default are not to be refunded.

153. The Committee will not admit or recognize any payment or claim on a defaulter's account that does not arise from a Stock Exchange transaction.

154. No defaulter shall be re-admitted, who shall not, if required, give up the name of any principal indebted to him, or who, within fourteen days from the date of his failure, shall not have delivered to the official assignees, or to his creditors, his original books and accounts, and a statement of the sums owing to, and by him, in the Stock Exchange, at the time of his failure.

155. A member, having compounded with his creditors, and being subsequently declared a defaulter, shall not be eligible for re-election for six months, and should he be declared in consequence of his having so compounded, his sureties shall not be called upon to pay their security money.

156. A defaulter shall not be eligible for re-admission, who shall not have paid from his own resources, independently of his security-money, at least one-third of the balance of any loss that may occur on his transactions, whether on his own account or that of principals; or who, in the event of his debts being less than the amount which his sureties may be called upon to pay, shall not have refunded to the sureties one-third of the amount paid by them.

157. A member who passes or retains a ticket for shares or stock, whereby loss is incurred or increased, and who shall be declared a defaulter in that account, shall not be eligible for re-admission for at least one year from the date of such default, provided it be proved to the satisfaction of the Committee that he knew himself to be insolvent at the time of passing or retaining the ticket.

158. No member shall carry on business for a defaulter for his benefit, without the consent of the creditors, and the sanction of the Committee. No member shall deal with a defaulter on his own account before his re-admission to the Stock Exchange.

159. No member shall transact business for a principal who, to his knowledge, is in default to another member, unless such person shall have made a satisfactory arrangement with his creditors.

160. Non-members shall be allowed an equal participation of assets, subject to the same conditions as members, provided their claims be admitted by the creditors, or in case of dispute by the Committee; and a person whose claim is so admitted, may be represented at the meeting of creditors by any member whom he may select.

161. No member, being a creditor upon a defaulter's estate, shall sell, assign, or pledge his claim on such estate to a non-member without the concurrence of the Committee; and such assignment shall be immediately communicated to the official assignees.

162. If a creditor of a defaulter be dead, the dividend due to him shall be paid to his legal representative; but if the creditor himself be a defaulter, the dividend due to him shall be paid to his creditors.

163. Upon any application for the re-admission of a defaulter, a sub-committee, of not more than three members, to be chosen in alphabetical rotation, shall investigate his conduct and accounts; and no further proceedings shall be taken by the Committee with regard to his re-admission, until the report of such sub-committee shall have been submitted, together with a balance sheet of the defaulter's estate, signed by himself.

The attention of the sub-committee shall be directed,

1st,—To ascertain the amount of the greatest balance of shares or stock open at any time during the account, the current balance

at his bankers, as well as the balance of shares or stock open at the time of failure; and whether the transactions were on his own account, or on account of principals, specifying the amount of each respectively.

2nd,—To ascertain the total amount of money paid by him; specifying the sums collected in the Stock Exchange; and those received from principals; and the money or other property brought forward by himself.

3rd,—To ascertain the conduct of the defaulter preceding and subsequent to his failure; and to inquire of the official assignees whether any matter, prejudicial or otherwise to the defaulter's application, has transpired at any meeting of creditors, or has officially come to their knowledge elsewhere.

4th,—To ascertain whether the defaulter has violated rule 157.

164. The re-admission of defaulters shall be in two distinct classes:—

The *first* class to be for cases of failure arising from the default of principals, or from other circumstances, where no bad faith, nor breach of the regulations of the house, has been practised; where the operations have been in reasonable proportion to the defaulter's means or resources; and where his general conduct has been irreproachable.

The *second* class, for cases marked by indiscretion, and by the absence of reasonable caution.

The decision of the Committee on the re-admission of a defaulter shall remain posted in the Stock Exchange for thirty days.

165. Every defaulter, bankrupt or insolvent, (applying for re-admission) shall furnish the sub-committee with every information they may require.

OFFICIAL ASSIGNEES.

166. Two or more members shall be appointed annually by the Committee, to act as official assignees, whose duty it shall be to obtain from a defaulter his original books of account, and a statement of the sums owing to and by him, to attend meetings of creditors, to summon the defaulter before such meetings; to enter into a strict examination of every account; to investigate any bargains suspected to have been effected at unfair prices; and to manage the estate in conformity with the rules, regulations, and usages of the Stock Exchange.

166A. Each official assignee shall find security amounting to £1,000 from two or more members of the Stock Exchange. In the event of any default or misappropriation by either assignee of funds or property entrusted to his care, or of any other act of dishonesty on his part, each of his sureties shall pay, under direction of the Committee, such sum as he shall have guaranteed.

167. The assignees shall collect and pay the assets to the credit of their joint account at a banker's, and shall distribute the same as soon as possible.

168. In every case of failure, the official assignee shall publicly fix the prices current in the market immediately before the declaration, at which prices all persons having accounts open with the defaulter shall close their transactions by buying of or selling to him such

stocks, shares, or other securities as he may have contracted to take or deliver, the differences arising from the defaulter's transactions being paid to or claimed from the official assignees. In the event of a dispute as to the prices named, they shall be fixed by two members of the Committee.

169. The official assignees shall not claim differences on a defaulter's estate, until they become due.

170. The official assignees shall not admit any payment to, or claim upon, a defaulter's estate for differences arising out of transactions, which are specially stated in the laws of the Committee as not sanctioned, or not recognized.

171. Once in every month, the official assignees shall lay before the Committee an account of the balances in their hands belonging to defaulters' estates, and the Committee shall order such balances as they think fit to be paid over to the account of the trustees of the Stock Exchange Benevolent Fund.

A statement of all sums so paid over, and of the amount remaining in the hands of the trustees of the Stock Exchange Benevolent Fund on the 31st of December in every year, shall be furnished by the official assignees, and deposited in the Committee room, for the inspection of the members of the Stock Exchange.

On the first of March, in each year, the official assignees shall lay before the Committee a statement of all dividends paid during the last year on each defaulter's estate.

Every defaulter's estate shall be registered in a book, to be kept by the official assignees.

172. The scale of remuneration to the official assignees shall be as follows:—

On the first £1,000 collected... 4 per cent.
from £1,000 to £5,000... 1 per cent.
above £5,000..... $\frac{1}{2}$ per cent.

But they shall not be entitled to commission on the re-distribution of sums received from another defaulter's estate, nor upon any funds or other property arising out of stock delivered to a defaulter, but not duly paid for by him.

INDEX.

N.B.—*The figures with parentheses refer to the numbers of the Rules in the Appendix—the others to the pages of the Text.*

ACCOUNT DAY, 8, 18.

ACCOUNTS,

- of principal in default may be closed by broker, 46.
- of member in default may be closed by assignees, 106.
- unsettled, how brought down in registered securities,
(103), 17.
- securities to bearer,
(115), 19.

ACTION. See *Legal Proceedings*.
for specific performance, 90.

ADMISSION TO STOCK EXCHANGE, 2.

- who are eligible for, 2.
- foreigners, (21), 3.
- persons engaged in other business, (27), 2.
- bankrupts, (28).
- re-elections and re-admissions, (18—35).

AGENT. See *Broker*.
payment to, by broker, 52.

ALLOTMENT,

- letters of, 64.
- stamp on, 64.
- dealings in, (57).
- dealings before, 116.
- application for, 119.
- by members, (58).
- clerks (48).

ALTERATION,

- of ticket, effect of, (91), 60.
- of rules, (12).

AMERICAN SECURITIES,

- amounts deliverable, (108), 63.
- quotable, (136), 7.
- for which tickets may be passed, (110), 17.

ANNUITIES, government, amount of bargains quotable, (136), 7.

ANTEDATED TICKETS, (90), 60.

APPLICANTS FOR MEMBERSHIP,

sureties for. See *Sureties*.

who are ineligible for admission, (21, 27, 28).

knowledge of, required of recommenders, (23, 34).

objections to, to be made in writing, (29).

rejected, renewal of application by, (30).

questions put to, (35).

APPLICATION,

for re-election, (18).

for admission, notice of, (22).

ARBITRATION between members, (62), 56.

ASSETS of defaulter, division of, amongst creditors, (167), 106.

ASSIGNEES, OFFICIAL,

appointment of, (166), 105.

duties of, (166—172), 106.

remuneration to, (172).

AUTHORIZED CLERKS. See *Clerks*.

BACKWARDATION, 13.

BALLOT for election of committee, (1, 3, 5).

BANK OF ENGLAND,

transfer of stock at, 99.

time for delivery of receipt, 19.

exemption of receipt from stamp duty, 95, 99.

stock of, amount of bargains quotable, (136), 7.

stamp on transfer, 94, 100.

BANK NOTES, demand of, by seller, (64), 69.

BANK SHARES, Leeman's Act, 25.

BANKER, payment to, on behalf of principal, by broker, 53.

BANKRUPTS. See *Insolvency, Defaulters*.

not admissible for election, (28).

cease to be members, (143), 102.

BARGAINS. See *Dealings*.

fulfilment of, between members, (50), 55.

private, with members of firms, (53).

with or for clerks, (54, 55), 4.

inviolability of, (56), 56.

in bonds of defaulting states, (59), 9.

BARGAINS—continued.

- in bonds of states at war with England, (60), 113.
- in dividends, prohibited, (61), 57.
- to be checked, (72), 8.
- when no time specified, in English, &c. stocks, (73), 9.
 - registered securities, (83), 9.
 - securities to bearer, (105), 9.
 - scrip, (124), 9.
- for future account, in English, &c. stocks, (74), 56.
 - registered securities, (84), 56.
 - securities to bearer, (106), 56.
- in new loans and shares contingent on settlement (124), 9, 111.
- for principals in default to other members, (159), 47.
- marking of, 7.
- quotation of, 7, 112.
- ex dividend, 66.
- cum drawing, 67.

BARNARD'S ACT, 21, 42.**BEAR, 10.****BLANK TRANSFERS,**

- not recognized by Committee, (87), 96.
- when void, 96.
- effect of, on contract, 97.
 - as estoppel, 97.

BONDS.

- drawn, (119), 63. See *Drawn Bonds*.
- buyer entitled to new, in right of old, (120), 65.
- deliverer responsible for genuineness of, (121), 70.
- torn or damaged, (122), 63.
- when deliverable ex coupon, (70), 66.
- delivery of, with irregular coupons, (122), 63.
- stamps on, 64.
 - on transfer of, 94.

BONUS, liability of transferor for, pending registration, 85.**BOUGHT IN STOCK, non-delivery of, (99), 58.****BRINGING DOWN UNSETTLED ACCOUNTS,**

- in registered securities, (103), 17.
- in securities to bearer, (115), 19.

BROKER,

- admission to Stock Exchange, 3.
- licence required, 3.
- bargain by, with jobber, 5.
- rights of, not generally affected by Gaming Act, 22, 42.
 - where order ultra vires, 29.

BROKER—continued.

- right of, to indemnity from principal, 30.
 - against buying in, 32.
 - selling out, 33.
 - calls, 33.
 - payment of price, 34.
- extent of implied indemnity, 36.
 - where broker in fault, 47.
- order to, by principal, how interpreted, 27.
- duty of, in execution of order, 36.
 - to transact business according to usage, 28.
 - to deal at arm's length, 37.
 - to send note of bargain to principal, 40.
 - to enforce contract in the House, 45.
 - on name being passed, 50.
 - on registration of transfer, 51.
 - on delivery of securities to principal, 51.
 - after completion of contract, 51.
- effect of private instructions to, 29.
- how long order to, remains in force, 39.
- countermand of order by principal, 40, 45.
- how far agent of principal, 30, 37.
- when bound as regards principal, 40.
- when entitled to payment from principal, 43.
- money entrusted to, for investment, 44.
- may close account on insolvency of principal, 46.
- rights of principal on insolvency of, 44, 50.
- property of, in securities bought for principal, 51.
- personal liability of, in the House, 69.
- liability for passing improper name, 76.
- of new company, to give information to Committee, (129), 116.
- caution to, (131).

BULL, 10.**BUYING IN,**

- liability of principal to indemnify broker against, 32, 35.
- time for, in English and India stocks, (77), 62.
 - in registered securities, (99), 62.
 - in securities to bearer, (112), 62.
- must be done publicly by officials appointed, (68), 57.
- when not permitted, (69), 58.
- notice of, (99, 112), 58, 62.
- limited to original issuer of ticket, (99, 100), 57.
- scrip, shares, or bonds, (112).
- who liable for, 62.
- waiver of right, (100, 113), 71.
- delivery after, 58.

CALL, 19. See Option.**CALLS ON SHARES,**

- transferor liable for, if made before sale, 84.
- pending, may be paid by seller, (93), 69.
- claim of transferor to indemnity in respect of, 86.
- broker to indemnify from principal, 33.

CANADIAN stock, stamp on transfer of, 94.

CARRYING OVER, 10. See *Continuation*.

CARRYING OVER DAY, 15.

CASH, right of seller to demand, (64), 69.

CERTIFICATES,

- to be delivered with transfer deed, 64, 98.
- effect of deposit of, without transfers, 99.
- responsibility of seller for genuineness, (86), 36.
- division of, on delivery, (96), 65.
- certification of, on transfer deed, (96), 64, 98.
- effect of, on Stock Exchange, (86), 70.
- at law, 98.
- nominal, under National Debt Act, 100.

CERTIFIED transfers, (96), 64, 98.

CHECKING,

- bargains, (72), 8.
- claims for new securities in right of old, (101), 65.

CHEQUES,

- to be passed through clearing-house, (64), 69.
- dishonoured, in payment for securities, 67, 77.

CITY OF LONDON, power of court to admit brokers, 3.

CLAIMS,

- for new securities in right of old, (101, 120), 65.
- against a defaulter, (153), 106.
- by non-members, (160), 103, 106.

CLERKS,

- authorized, 4, (41—49).
 - members who become clerks to their sureties, (25, 26).
 - to other members, (47).
 - by brokers, cannot act as jobbers, (40), 3.
 - must have served two years, (41).
 - eligibility for admission of, (41).
 - application for admission of, (42), 2.
 - of new members, (43).
 - withdrawal of authority from, (44), 4.
 - list of, (45), 4.
 - loans without security to, (46).
 - responsibility of employers of, (46).
 - members acting as, (47).
 - previous occupation of, (42).
 - notice of admission of, (42).
 - dismissal of, (44).
 - applying for shares in new companies, &c., (48).
 - of defaulters excluded, (49).
 - of deceased members, (49).

CLERKS—continued.

- exclusion or expulsion of, (49, 54).
- bargains with or for, forbidden, (54, 55), 4.
- speculative business for, (55).

CLERKS OF THE HOUSE,

- making of bargains by, 7.
- fixing of making-up prices, (82, 102, 114), 11, 19.
- buying in, and selling out, (68), 57.

CLOSING of register of shareholders, bargains during, 66.**COLONIAL** railway bonds, dealings in, (123), 67.**COMMISSION,**

- broker's, 42.
- where contract note unstamped, 41.
- where broker not licensed, 42.
- on gaming contracts, 42.

COMMITTEE,

- for general purposes, election of, (1), 2.
- powers of, under deed of settlement, (5).
- quorum of, and when not present, (4, 9).
- qualification to serve, or vote, (2).
- supplying vacancies in, (3).
- ballotting lists, (1, 3, 5).
- election of chairman and deputy-chairman, (6).
- secretary and scrutineers, (7).
- meetings of, (8).
- business of, (10).
- meetings of, special and routine, (10).
- notices of, (10).
- confirmation of minutes of, (11, 15, 16, 17).
- decision of, final, (11).
- precedence of business in, (12).
- notice of resolutions for new rules, (12).
- communications to, to be in writing, (13).
- members and clerks, to attend when required, (14).
- expulsion of members of committee, (15).
- confirmation of special resolutions, (15, 16, 17).
- expulsion or suspension of members by committee, (16).
- publication of name of member suspended, (16A), 102.
- suspension of rules or resolutions, (17).
- special, for re-admission of defaulters twice rejected, (30).
- complaint to, by non-member, (52), 53.
- intervention of, in legal proceedings between members, (51), 55, 72.
- to decide upon objections to names passed, 77.
- effect of refusal by, to recognize bargains, 56.

COMPANIES,

- negotiation of loans for defaulting states, (59), 113.
- new, settlement of bargains in, (124), 9, 111.
- when granted, (127), 114.
- documents required, (128), 114.

COMPANIES—continued.

- new, quotation of, (129), 115.
- issue of new shares within twelve months of first settlement, (130), 116.
- winding up of, after dealing in shares of, 33.
- abandonment of project after dealing in shares of, 91.
- purchase by, of their own shares, 29, 116.

COMPLAINTS against members by non-members, (52), 53.

COMPOSITION with creditors, effect of, on Stock Exchange, 104.

CONFIRMATION of minutes and resolutions, (10, 11, 15, 16, 17).

CONSENT of directors to transfer, when material, 33, 84, 89, 91.

CONSIDERATION MONEY, how set out on transfer deed, 93.

CONTANGO, 12.

CONTINUATION,

- distinguished from loans, 14.
- must be effected at making-up price, (67), 11.
- by broker without authority of principal, 28.

CONTRACT,

- for sale of shares need not be in writing, 40.
- where in writing, stamp required, 41.
- implied between principal and broker, 30.
 - members, 55.
 - principal and jobber, 75, 80.
 - transferor and transferee, 83.

CONTRACT NOTE, 8, 40.

- stamp on, 41.
- should specify day for delivery, 41, 46.
- effect of adding name of jobber, 41.

CORNERING, 120.

COST BOOK MINES,

- transfer of shares in, 101.
- application for settlement for, 115.

COUNTERMAND of order by principal, 40.

- where contract by way of gaming, 43.
- where not executed in reasonable time, 44.

COUPONS. See *Certificates*.

COUPONS (DIVIDEND),

- fixing prices for foreign, (70), 66.
- current, must be delivered with securities to bearer, (70), 66.
- time for objecting to non-delivery of, (122), 63.
- unpaid, when returnable, (118).
- over-due, quotation of foreign bonds with, (137).

CREDIT, sale upon, not within authority of broker, 28.

CREDITORS OF DEFAULTER,

- receipt by, of payment in advance, (146), 107.
- for differences, equality of rights among, (147), 107.
- for differences, priority of, (148), 108.
- for securities delivered, priority of, (149), 108.
- division of assets amongst, (167), 106.
- unsecured, 108.

CRIMINAL OFFENCES,

- spreading false rumours, 113.
- obtaining quotation by false pretences, 121.

CUSTOM,

- when evidence of, admissible, 27.
- as between principal and broker, 28, 51.
- members, 55.
- principal and jobber, 73.
- transferor and transferee, 84.
- when principal not bound by, 28, 52.
- when reasonableness of, material, 28, 55.

DAMAGED BONDS OR SCRIP,

- not a valid delivery, (122), 63.
- time for objecting to delivery of, (122), 63.

DAMAGES for non-completion of contract, 57, 86.

DATE on ticket, (90), 16.

DEALER, 6. See *Jobber*.

DEALINGS. See *Bargains*.

- for or with defaulters prohibited, (158), 105.
- for principals known to be insolvent, (159), 47.
- when not sanctioned by Committee, 56, 107.
- before allotment, 116.

DEATH,

- of transferor, 70.
- responsibility for genuineness of securities, (121), 70.
- of transferee, 89.
- survival of right of transfer to indemnity, 89.
- of creditor of defaulter, (167), 109.

DEBENTURES,

- stamp on, 64.
- bargains in, how interest accounted for, 66.
- stamp on transfer of, 94.

DEFAULTERS,

- classification of, (32, 164).
- rejected, renewal of application by, (30).

DEFAULTERS—continued.

- re-admission of, (32, 33), 109. See *Re-admission*.
- declaration of, (142), 102, 104.
- cease to be members, (143), 102.
- to render accounts, (154), 105.
 - names of principals, (154), 105.
- who have previously compounded, re-election of, (155).
- passing or retaining tickets (157).
- business for or with prohibited, (158), 105.
- business with principal in default, (159), 47.
- priority of claims for differences, 108.
 - securities delivered, 108.
- not to be dealt with by members (158), 105.
- claims against by non-members, (160), 103.
 - not to be assigned to non-members, (161), 104.
- sub-committee on (163).
- to furnish information to Committee, (165).
- representatives of creditors of, entitled to dividend, (167), 109.
- prices at which transactions with, must be closed, (168), 106.
- differences due to, when to be claimed, (169), 106.
- monthly statement by assignees, (171).
- register of accounts of, (171).
- effect of bankruptcy or liquidation, 103.

DELIVERY,

- of securities to bearer, 18, 62.
 - after time, 60.
- of registered securities, 19, 62, 64.
- of American bonds, (108), 63.
- of English, &c. stock, 19, 99.
- duty of broker to enforce, 45, 50.
- as between broker and principal, 51.
- time for, as between members, 63.
 - after buying in, 58.
- what necessary, 63.
- current and overdue coupons, 66.
- right of buyer to claim from immediate seller, 67.
- rights of seller after, where buyer in default, 67, 108.
- buying in on default of, 62.

DIFFERENCES,

- not within Gaming Act, 22.
- how claimed on continuation, 11.
 - purchase or sale, 18.
 - passing tickets, (66), 60.
 - declaration of default, 106.
- claim for, by trustee in bankruptcy, 104.
- receipt of, in advance, from defaulter, 107.
- priority of claims for, against defaulter's estate, 108.
- on old transactions, not claimable on default, (152), 109.

DIRECTORS,

refusal of assent of, to transfer, 33, 84, 89, 91.
may register transfer on application of transferor, 86.

DISCHARGE,

of buying jobber, 77.
of selling jobber, 81.
of liabilities of defaulter, 110.

DISCONTINUANCE of subscription to Stock Exchange, (31).

DISSOLUTION,

of partnerships, (36).
on failure of firm, (37).

DIVIDENDS,

bargains in prospective forbidden, (61), 57.
how to be accounted for in settlement, (70), 66.
lender of stock, when entitled to, (80).
when seller of stock responsible for, (86), 66, 85.
on estate of defaulter, 106.
where creditor deceased; (162), 109.

DIVISION of assets amongst creditors, (167).

DOCUMENTS, transferor responsible for regularity of, (86), 70.

DRAWING FOR REDEMPTION,

when buyer entitled to, 67.
when seller entitled to, 63, 67.

DRAWN BONDS,

not a valid delivery, (119), 63.
time for objecting to delivery of, (119), 63.

ENTRANCE FEE, 2.

EQUITABLE MORTGAGE, 99.

EXCHEQUER BILLS,

amount of bargains quotable, (136), 7.
bargains in, are for bills not filled up to order, (116).

EXPULSION,

of members of the committee, (15).
or suspension of members, (16).
public notification of, (16A).
of clerk for dealing on his own account, (54).

FAILURES, (142—165). See *Defaulters—Insolvency*.

private, prohibited on Stock Exchange, (144, 145), 104.
dissolve partnership, (37).

FALSE RUMOURS, criminal liability for spreading, 113.

FEES for registration. See *Registration*.

FINE for non-delivery of English, &c. stock, (77), 62.

FOLLOWING MONEY in broker's hands, 44.

FOREIGN BONDS,

when dealings in, not recognised, (59, 60), 9, 113.

of states at war with England, (60), 113.

loans quoted abroad, settling in, (126), 10, 114.

companies quoted abroad, quotation of, (129), 66, 116.

amount of bargains quotable, (136), 7.

amounts for which tickets may be passed, 17.

stamps on, 64.

transfers of, when liable to stamp duty, 95.

FOREIGN GOVERNMENTS, issue of new loan when recognized, (59, 60), 10, 113.

FOREIGN RAILWAY BONDS,

dealings in, (123), 67.

stamp on, 64.

transfer of, 94.

FOREIGNER,

when eligible for admission as member, (21), 3.

objection to, as transferee, 77.

FORGERY,

of securities, responsibility for, 70.

by filling up blank transfers, 97.

FRAUD. See *Statute of Frauds*.

bargains liable to be annulled, 56, 70.

of jobber in passing improper name, 78.

in marking fictitious bargains, 112.

in obtaining quotation or settlement, 113, 114, 121.

by spreading false rumours, 113.

FRENCH RENTES,

amount for which ticket may be passed, (110), 17.

bargains in, how settled, (117).

FUNDS. See *Government Stocks*.

FUTURE ACCOUNT, dealings for, 56.

GAMING, 20.

when contracts voidable, 21, 42.

rights of broker, 23, 42.

options, 24.

dealings in prospective dividends, 57.

GENUINENESS,
responsibility for, of documents of transfer, (86), 36.
securities to bearer, (121), 70.

GOVERNMENT STOCKS,
amount of bargains quotable, 7.
time for delivery of transfer receipts, 19.
how transferred at Bank, 99.
exemption of transfer from stamp duty, 95, 99.

GUARANTEE,
by jobber, of responsibility of transferee, 76.
registration of transfer, 77, 81.
of candidate for membership, 2. See *Sureties*.

HOLIDAYS on Stock Exchange, (72).

HOURS of business on Stock Exchange, (72).

ILLEGAL CONTRACTS, 21.

INCOME TAX, deducted from dividends in settlement, (70), 66.

INDEMNITY,
as between principal and broker, 31.
principal and jobber, 75, 81.
transferor and equitable owner, 86.
of sureties for candidates, (20), 2.

INDIA BONDS, amount of bargains quotable (135), 7.

INDIA STOCK,
time for delivery of transfer tickets, (76).
receipts (78), 19.
transfer stamp, 94.
fees, 99.
limit as to number of transfers, (81).

INFANT,
liability of jobber for passing name of, 76.
broker for passing name of, 76.

INSOLVENCY,
of principal, rights of broker on, 46.
of broker, rights of principal on, 44, 49.
to change brokers, 50, 105.
of jobber, where named in contract note, 41.
of transferee, rights of transferor on, 89.
of members generally, 102. See *Defaulters*.

INSTALMENTS, settlement of, where due on settling days, (133), 10.

INTEREST. See *Dividends*.

how accounted for in settlement, 66.

cases of loans, (80).

INTERMEDIATES,

release of, on payment of purchase-money, 77, 86.

by waiver of right to sell out, (97), 71.

buy in, (100, 113), 71.

ITALIAN STOCK, amount for which ticket may be passed, (110), 17.

JOBBER,

method of dealing, 5.

insertion of name of, in broker's contract note, 41.

effect of sale to, 74.

implied contract with selling principal, 75.

when liable for passing improper name, 76.

when discharged from liability, 77, 81.

liability of, for non-registration, 78.

effect of purchase from, 80.

implied contract with buying principal, 80.

LEEMAN'S ACT, 25.

LEGAL PROCEEDINGS,

against members, (51), 73.

by members, (51), 55, 72.

intervention of committee, (51), 55, 72.

arising from disputed title after registration, (86), 70.

in bankruptcy of member, 103.

LETTERS OF ALLOTMENT, 64.

LETTERS OF RENUNCIATION, 65.

LIBEL, by publication of name of defaulters, (16A), 102.

LICENCE (BROKER'S), 3.

does not affect right to indemnity from principal, 31.

right to commission dependent on, 42.

LIST OF PRICES. See *Price List*.

LOANS,

on security, security to be returned on demand, (67), 14.

on English stock, return of security, (79).

dividend to be allowed, (80).

on securities valued below market price, (150), 108.

without security, effect of default of borrower, (151), 108.

to authorized clerks, (46).

of stock, distinguished from continuation, 15.

stamps on, 95.

liability of borrower for, (94), 69.

LOANS (FOREIGN),

- recognition of by committee, 113.
- violating conditions of previous loan, (59), 113.
- raised while at war with England, (60), 113.
- new, settlement of bargains in, (124), 9, 111.
- when granted, (125), 113.
- quotation of, (125), 111, 114.

LUNATIC,

- liability of jobber for passing name of, 76.
- broker for passing name of, 76.

"MAKING A PRICE," 5.**MAKING-UP DAY, 15.****MAKING UP PRICES,**

- how fixed, (82), 11.
- in English stock, (82).
- in securities deliverable by deed of transfer, (102).
- to bearer, (114).
- for unsettled accounts in registered securities, (103), 17.
- securities to bearer, (115), 19.
- on making-up day, (102), 11.
- on name day, (102), 17.
- on settling day, (115), 19.

MAN OF STRAW, effect of passing name of, 78, 87.**MANAGERS of Stock Exchange, 2.****MARKING bargains, 7, 112.****MARRIED WOMAN,**

- liability of jobber for passing name of, 76.
- broker for passing name of, 76.

MEETINGS,

- of creditors of defaulter, 105.
- attendance of non-members at, 103.

MEMBERS,

- of Stock Exchange, 3. See *Admission—Suspension, &c.*
- legal proceedings by, (51), 55, 72.
- against, (51), 73.
- alone recognized in bargains, (50), 69.
- insolvency of, 102. See *Defaulters.*

MISREPRESENTATION,

- ground for annulling bargain by committee, 56.
- refusing settlement of new loan, 113.
- liability of promoters of company for, 121.

MORTGAGE,

- of stock or shares, 15, 87.
- by deposit of certificates without transfer deed, 99.

MORTGAGE—continued.

stamp on, 95.

liability of mortgagor for, (94), 69.

stamp on transfer of, 94.

NAME DAY, 16. See *Ticket Day*.**NEGOTIABILITY** of securities, 90.**NEW APPLICANTS.** See *Applicants*.**NEW RULES,** power of committee to make, (5, 12).**NEW SECURITIES,**

issued in right of old, buyer entitled to, (101, 120), 65, 85.

time for claiming delivery of, (101, 120), 65.

fixing prices for, (101), 65.

renunciation of, (101), 65.

unchecked claims for, (101), 65.

issue of, within twelve months of special settling, (130), 116.

when recognized by committee, 9, 113. See *Quotation—Settlement*.

dealings in, where projected company abandoned, 91.

special settlement, 9, 111.

NON-CURRENT SECURITIES,

dealing in, 6.

quotation of, 112.

NON-MEMBERS,

complaints against members by, to committee, (52), 53.

participation by, in assets of defaulter, (160), 103, 106.

attendance by, at meetings of creditors, (160), 103.

assignment of claims of members to, 104.

NOTICE, of buying in, (99, 112), 58, 62.**NOVATION** of contract on Stock Exchange, 77.**NUMBERS,**

of bonds delivered after time, to be taken, (112), 60.

on tickets for securities to bearer, (110).

on sale of bank shares, 25.

OBJECTIONS,

to admissions or re-elections, (29).

to name passed, 77.

to granting settlement for new loan, 113.

OFFERS TO BUY OR SELL STOCK,

to what limit binding in English, &c., stock, (75), 5.

in registered securities, (85), 5.

in securities to bearer, 107), 5.

- by committee, 113.
- conditions of previous loan, (59), 113.
- time at war with England, (60), 113.
- statement of bargains in, (124), 9, 111.
- when granted, (125), 113.
- question of, (125), 111, 114.

Law, 303-1

10-11-12

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

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Abstract

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CONFIDENTIAL - SECURITY INFORMATION

REVOCATION of broker's authority. See *Countermand*.

RULES OF STOCK EXCHANGE, 125.

- alteration of, (12).
- suspension of, (17).
- when non-members bound by, 27, 36, 103.

SANCTION OF COMMITTEE,

- effect of, on bargains, 56, 107.
 - new loans, 9.
 - legal proceedings by members, 72.
 - carrying on business of a defaulter, 104.

SCRIP,

- bargains contingent on special settling day, 9, 111.
- time for delivery of, 19.
- negotiability of, 90.
- amount quotable, (136), 7.
- specific performance of contract for sale of, 91.

SCRUTINEERS at elections, (7).

SECRETARY OF STOCK EXCHANGE,

- appointment of, (7).
- buying in and selling out by, (68), 57.
- fixing price of foreign coupons by, (70), 66.
- certification of transfers by, 65.

SELLING OUT,

- liability of principal to indemnify broker against, 33.
- on default in passing ticket, 59.
- on default of payment, 68.
- waiver of right, (97), 71.
- must be done publicly by officials appointed, (68), 58.
- of English stock, &c., (76).
- of shares deliverable by deed of transfer, (97).
- of securities to bearer, (109).
- payment after, 58.

SETTLEMENT, 15.

- making-up day, 15.
- name day, 16.
- account day, 18.
- fixing of ordinary, (132, 133), 8.
 - special, in new loans, (125), 113.
 - companies, (127), 114.
 - omnium and scrip, (124, 133), 10, 114.
- liability for misrepresentation on application for, 121.

SHARE WARRANTS, stamp on, 64.

SHARES converted into stock, tickets for, (89).

SHUTTING the House by Committee, (11, 72).

37), 66.

12.
(136,) 7.

13.
on application for, 121.

include accrued interest,

(4), 109. See *Defaulters*.

material, 28, 55.

action.

of, (23).

(31).

current securities, 6.

37, 31.

24, 23.

REVOCATION of broker's authority. *See Countermand.*

RULES OF STOCK EXCHANGE, 125.

alteration of, (12).

suspension of, (17).

when non-members bound by, 27, 36, 103.

SANCTION OF COMMITTEE,

effect of, on bargains, 56, 107.

new loans, 9.

legal proceedings by members, 72.

carrying on business of a defaulter, 104.

SCHEM,

bargains contingent on special settling day, 9, 111.

time for delivery of, 19.

negotiability of, 90.

amount quotable, (136), 7.

specific performance of contract for sale of, 91.

SCRUTINEERS at elections, (7).

SECRETARY OF STOCK EXCHANGE,

appointment of, (7).

buying in and selling out by, (68), 57.

fixing price of foreign coupons by, (70), 66.

certification of transfers by, 65.

SELLING OUT,

liability of principal to indemnify broker against, 33.

on default in passing ticket, 59.

on default of payment, 68.

waiver of right, (87), 71.

must be done publicly by officials appointed, (68), 68.

of English stock, &c., (76).

of shares deliverable by deed of transfer, (87).

of securities to bearer, (1).

payment

SETTLEMENT

Habill

W

114.
133)
in 100

SPECIAL SETTLING DAYS, 9. See *Settlement*.

SPECIFIC PERFORMANCE, as between ultimate parties, 90.

SPLITTING TICKETS, 17.

- who responsible for cost of, (88), 61.
- payment for portions of stock delivered, (95), 68.
- not allowed in securities to bearer, 17, 68.

STAMPS,

- on broker's contract note, 41.
- on transfer, buyer's liability for, (94), 61, 92.
- amount required, 94.
- on letter of allotment, 64.
- renunciation, 65.
- on securities to bearer, 63.
- on share warrants to bearer, 64.
- on transfer of government stock, 95.
- shares in cost book mines, 101.
- on mortgage, 95.
- liability of mortgagor for, (94), 69.

STATUTE OF FRAUDS, contract for sale of stock not within, 40.

STATUTES,

- 10 Geo. 2, c. 8..21.
- 57 Geo. 3, c. lx..3.
- 8 Vict. c. 16..93.
- 8 & 9 Vict. c. 109..20, 42.
- 19 & 20 Vict. c. 47..93.
- 25 & 26 Vict. c. 89..34, 35, 93, 96.
- 30 Vict. c. 29..25.
- 30 & 31 Vict. c. 131..86.
- 32 & 33 Vict. c. 71..89.
- 33 & 34 Vict. c. 60..3.
- 33 & 34 Vict. c. 71..100.
- 33 & 34 Vict. c. 97..41, 64, 94.

STOCK,

- fine for non-delivery of English, &c. (77), 62.
- delivery of English, &c., (78), 99.
- registered, (104), 64.
- to bearer, (110), 63.
- bought in, (99), 58.
- borrowed, return of, (79).
- loans on, dividend to be accounted for, (80).
- shares consolidated into, tickets for, (89).
- payment for portions delivered, when registered, (95), 68.
- to bearer, (110), 68.
- of Bank of England, how transferred, 99.

STOCK BROKERS, 3. See *Brokers*.

STOCK CERTIFICATES,

- under the National Debt Act, 100.
- exempt from stamp duty, 64.

STOCK EXCHANGE,

- constitution of, 1.
- entrance fee and subscription, 2. See *Admission*, &c.
- custom of. See *Custom*.

SUBSCRIPTION,

- of members, 2.
- of clerks, 2.
- of brokers to city, 3.
- re-election after discontinuance of, (31).

SURETIES,

- for new members, (20-43), 2.
- personal knowledge of applicants required, (23).
- new, when required, (26).
- questions put to, (34).
- consent to partnership required, (38).
- consent to employment of authorized clerks, (43).
- of defaulters, when not liable, (155).
- claim by, (156), 109.

SUSPENSION,

- of members, (16).
- public notification of, (16A).
- of rules, &c. (17).

SWORN BROKERS, 3.**TAKING IN STOCK, 12.**

- distinguished from loan, 14.
- implied contract upon, 75.

TAX, on dividends, deducted in settlement, (70), 66.**TICKET,**

- time for passing, in English, &c. stock, (76) 100.
- registered securities, (88), 16.
- securities to bearer, (110), 17.
- after a selling out, (98), 58.
- effect of passing after hours, (88).
- undated or ante-dated, (90), 60.
- alterations in or detention of, (91), 60.
- price on, in registered securities, (92), 16.
- split, payment for portions delivered, (95), 68.
- liability for increased cost of, (88), 61.
- to contain full names, &c. (88), 16.
- must specify amounts of transfers desired, 61.
- endorsement of, (88), 16.
- notification of time on, (88), 60.
- selling out on delay in passing, 59.
- low-priced, difference claimable on passing of, (86), 60.
- passing or retaining, by defaulters, (157).
- limit of amounts in securities to bearer, (110), 17.
- when seller entitled to refuse, (92), 61.
- for Government or Bank stock, 99.

TICKET DAY, 16.

when seller entitled to difference on, (66), 60.

TRADERS,

outside not eligible as members, (27), 2.

members are within definition of, in Bankruptcy Act, 102.

TRANSFER,

effect of execution of, 77, 86, 90.

acceptance of, a novation of contract, 77, 86.

registration of, liability of jobber in respect of, 78.

duty of transferee in respect of, 74, 86.

transferor in respect of, 81, 84.

broker in respect of, 51.

effect of refusal of assent by directors, 33, 84, 89, 91.

when tender of, a condition precedent to right of action, 92.

prepared by seller, 92.

limit to amount of, (94), 61.

buyer liable for stamps and fees, (94), 61, 92.

by way of loan, borrower liable for fees, (94), 69.

stamps on, 94.

form of, 93.

consideration must be set out, 93.

informalities in, 95.

when must be by deed, 96.

in blank, (87), 96.

effect of void transfer on contract, 97.

as estoppel, 97.

to be accompanied by certificates, (96), 64, 98.

of government stock, 99.

exempt from stamp duty, 95, 99.

of stock of Bank of England, 100.

limit to number of, in English, &c. stock, (81).

of shares in cost book mines, 101.

by way of mortgage, 87, 99.

TRANSFEEEE,

inquiry by broker into solvency of, 50.

warranty of competency of, by jobber, 75.

liabilities of, towards transferor, 85.

not dependent on registration, 86.

effect of bankruptcy of, 89.

rights of, as against prior equitable interests, 90.

claim by, for new securities in right of old, 65, 85.

dividend on securities bought, 66, 85.

TRANSFEROR,

liabilities of, towards transferee, 84.

in respect of registration, 81, 84.

a trustee for transferee pending registration, 85.

right to indemnity from equitable owner, 86.

independent of registration, 87, 91.

continues after registration, 89.

death or bankruptcy, 89.

TRANSFEROR—*continued*.

- right to apply to directors to register transfer, 86.
- right to specific performance of contract, 90.
- responsible for genuineness of securities, 70.

TURN OF THE MARKET, 5.

UNDATED TICKETS, (90), 60.

UNSETTLED BARGAINS,

- adjustment of, in registered securities, (103), 17.
- securities to bearer, (115) 19.

USAGE. See *Custom*.VOIDABLE CONTRACTS, 20. See *Gaming*.

- Leeman's Act, 25.
- Companies Acts, 34.

WAGERS, 20. See *Gaming*.

WAIVER,

- of right to buy in, (100, 113), 71.
- sell out, (87), 71.
- of inquiry as to sufficiency of transferee, 77.

WAR, loans raised during, 113.

WINDING-UP, effect of, on contract for sale of shares, 33.

WITHDRAWAL of instructions to broker. See *Countermand*.



- TRANSFEROR—*continued*.
right to apply to directors to register transfer, 86.
right to specific performance of contract, 90.
responsible for genuineness of securities, 70.
- TURN OF THE MARKET, 5.
- UNDATED TICKETS, (90), 60.
- UNSETTLED BARGAINS,
adjustment of, in registered securities, (103), 17.
securities to bearer, (115) 19.
- USAGE. See *Custom*.
- VOIDABLE CONTRACTS, 20. See *Gaming*.
Leeman's Act, 25.
Companies Acts, 34.
- WAGERS, 20. See *Gaming*.
- WAIVER,
of right to buy in, (100, 113), 71.
sell out, (87), 71.
of inquiry as to sufficiency of transferee, 77.
- WAR, loans raised during, 113.
- WINDING-UP, effect of, on contract for sale of shares, 33.
- WITHDRAWAL of instructions to broker. See *Countermand*.

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